



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 179

AS ENACTED

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to health care practitioners.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔SECTION 1. KRS 313.010 IS REPEALED AND REENACTED TO READ AS
2 FOLLOWS:

3 *As used in this chapter, unless the context requires otherwise:*

4 *(1) "Board" means the Kentucky Board of Dentistry;*

5 *(2) "Certified dental technician" means an individual recognized as such by the*
6 *National Board for Certification in Dental Laboratory Technology;*

7 *(3) "Dentist" means any person who has graduated from a Commission on Dental*
8 *Accreditation (CODA) accredited dental school and has been conferred with the*
9 *degree of "Doctor of Medical Dentistry" (D.M.D.) or "Doctor of Dental Surgery"*
10 *(D.D.S.);*

11 *(4) "Dental hygienist" means any person who has graduated from a CODA*
12 *accredited dental hygiene program at an institute of higher learning and has*
13 *been credentialed as a "Registered Dental Hygienist";*

14 *(5) "Registered dental assistant" means any person who is registered with the board*
15 *and works under the direct supervision of a dentist;*

16 *(6) "Dental auxiliary personnel" means any staff member of a dental office not*
17 *licensed by or registered with the board;*

18 *(7) "Dental laboratory" includes any person, firm, or corporation other than a*
19 *licensed dentist, who directly or through an agent or employee, by any means or*
20 *method, in any way supplies or manufactures artificial substitutes for the natural*
21 *teeth, other than those unfinished substitutes normally available through dental*
22 *supply houses, or who furnishes supplies, constructs, or reproduces or repairs*
23 *any prosthetic denture, bridge, or appliance to be worn in the human mouth or*
24 *who performs or offers or undertakes to perform or accomplish dental laboratory*
25 *technology;*

1 (8) "Dental laboratory technician" means any person who performs or offers or
2 undertakes to perform or accomplish dental laboratory technology;

3 (9) "Dentistry" means the evaluation, diagnosis, prevention, or surgical,
4 nonsurgical, or related treatment of diseases, disorders, or conditions of the oral
5 cavity, maxillofacial area, or the adjacent and associated structures and their
6 impact on the human body provided by a dentist within the scope of his or her
7 education, training, and experience and in accordance with the ethics of the
8 profession and applicable law. Any person shall be regarded as "practicing
9 dentistry" who, for a fee, salary, or other reward paid, or to be paid either to
10 himself or herself, or to another person, performs or advertises to perform, dental
11 operations of any kind, including the whitening of natural or manufactured
12 teeth, or who diagnoses or treats diseases or lesions of human teeth or jaws, or
13 attempts to correct malpositions thereof, or who diagnoses or treats disorders, or
14 deficiencies of the oral cavity and adjacent associated structures, or who takes
15 impressions of the human teeth or jaws to be used directly in the fabrication of
16 any intraoral appliance, or shall construct, supply, reproduce or repair any
17 prosthetic denture, bridge, artificial restoration, appliance or other structure to be
18 used or worn as a substitute for natural teeth, except upon the written laboratory
19 procedure work order of a licensed dentist and constructed upon or by the use of
20 casts or models made from an impression taken by a licensed dentist, or who
21 shall advertise, offer, sell, or deliver any such substitute or the services rendered
22 in the construction, reproduction, supply, or repair thereof to any person other
23 than a licensed dentist, or who places or adjusts such substitute in the oral cavity
24 of another, or who uses the words "dentist," "dental surgeon," the letters
25 "D.D.S.," "D.M.D.," or other letters or title in connection with his or her name,
26 which in any way represents him or her as being engaged in the practice of
27 dentistry;

1 (10) "Dental hygiene" means the treatment of the oral cavity, including but not
 2 limited to dental hygiene assessment or screening, scaling and root planing,
 3 nonsurgical therapy, removing calcareous deposits, removing accumulated
 4 accretion from beneath the free gingival margin, cavity preventive procedures,
 5 periodontal procedures that require administering antimicrobial agents along
 6 with other general dentistry activities outlined in the treatment care plan and not
 7 prohibited by this chapter or by administrative regulation promulgated by the
 8 board;

9 (11) "Dental specialist" means a dentist who practices in fields of specialty recognized
 10 and approved by the American Dental Association;

11 (12) "Delegated duties list" means the list of procedures authorized in administrative
 12 regulation which may be delegated by a dentist licensed under this chapter to a
 13 licensed dental hygienist or a registered dental assistant;

14 (13) "Direct supervision" means that the dentist is physically present in the dental
 15 office or treatment facility, personally diagnoses the condition to be treated,
 16 authorizes the procedures to be performed, remains in the dental office or
 17 treatment facility while the procedures are being performed, and evaluates the
 18 performance of the individual supervised;

19 (14) "General supervision" means a circumstance of treatment in which a dentist
 20 licensed under this chapter must diagnose and authorize the work to be
 21 performed on a patient by the dental hygienist authorized pursuant to
 22 administrative regulation to work under general supervision but the dentist is not
 23 required to be on the premises while the treatment is carried out;

24 (15) "Telehealth" means the use of interactive audio, video, or other electronic media
 25 to deliver health care. It includes the use of electronic media for diagnosis,
 26 consultation, treatment, transfer of health or medical data, and continuing
 27 education; and

1 (16) "Volunteer community health setting" means a setting in which services are
 2 rendered at no charge to the patient or to third-party payors.

3 ➔SECTION 2. KRS 313.020 IS REPEALED AND REENACTED TO READ AS
 4 FOLLOWS:

5 (1) The Kentucky Board of Dentistry shall consist of ten (10) members, each
 6 appointed by the Governor to a four (4) year term. Seven (7) members of the
 7 board shall be licensed dentists appointed from a list of three (3) names
 8 recommended for each board position by the resident licensed dentists of
 9 Kentucky at an annual election at a time selected by the Kentucky Board of
 10 Dentistry. Two (2) members of the board shall be dental hygienists licensed to
 11 practice dental hygiene in the Commonwealth. Each appointment to the board of
 12 a licensed dental hygienist shall be made from a list of three (3) names
 13 recommended for this position by the resident licensed dental hygienists of
 14 Kentucky at an annual election at a time selected by the board. One (1) member
 15 shall be a citizen at large who is not associated with or financially interested in
 16 the practice or business regulated. One (1) nonvoting ex officio representative
 17 from each the University of Kentucky and the University of Louisville shall
 18 represent the dental schools' interests. One (1) nonvoting ex officio representative
 19 from a hygiene program not associated with the University of Kentucky or the
 20 University of Louisville shall represent the dental hygiene programs' interests.
 21 The hygiene school seats shall rotate on a yearly basis. One (1) nonvoting ex
 22 officio representative from the Department for Public Health shall represent the
 23 department's interests.

24 (2) Individuals seeking board appointment, other than the citizen member, shall have
 25 been an actual resident and licensed practicing dentist or dental hygienist of the
 26 Commonwealth for not less than five (5) years immediately preceding his or her
 27 appointment to the board, be in good standing with the board, and shall not have

1 been disciplined by the board in the past eight (8) years. A voting member shall
 2 not receive compensation from or have a financial interest in any dental college
 3 or dental department of any institution of learning, dental supply business, or any
 4 entity over which the board has regulatory authority or sets standards for. For
 5 this subsection alone, a private admonishment shall not count as discipline.

6 (3) No board member shall serve more than two (2) consecutive terms. A member
 7 appointed to a partial term vacancy exceeding two (2) years shall be deemed to
 8 have served one (1) full term. A former member may be reappointed following an
 9 absence of one (1) term.

10 (4) The board shall annually:

11 (a) Meet at least four (4) times a year;

12 (b) At the first meeting of the board after July 1, elect officers of the board by
 13 majority vote of the members present; and

14 (c) Set a schedule of at least four (4) regular meetings for the next twelve (12)
 15 month period.

16 (5) A majority of the voting members of the board shall constitute a quorum for the
 17 transaction of business.

18 (6) (a) A member of the board who misses three (3) regular meetings in one (1)
 19 year shall be deemed to have resigned from the board, and his or her
 20 position shall be deemed vacant.

21 (b) The failure of a board member to attend a special or emergency meeting
 22 shall not result in any penalty.

23 (c) The year specified in paragraph (a) of this subsection shall begin with the
 24 first meeting missed and end three hundred sixty-five (365) days later or
 25 with the third meeting missed, whichever occurs earlier.

26 (d) The Governor shall appoint a person of the same class to fill the vacancy
 27 within ninety (90) days.

(e) A person removed under this subsection shall not be reappointed to the board for four (4) years.

(7) Each voting member of the board shall receive any necessary expenses incurred in attending its meetings. Each voting member shall receive as compensation two hundred dollars (\$200) for each day actually engaged in the duties of his or her office.

(8) Annual reports and recommendations from the board shall be sent by February 1 each year to the Governor and the General Assembly.

→ SECTION 3. KRS 313.021 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The board shall:

(a) Exercise all of the administrative functions of the Commonwealth in the regulation of the profession of dentistry, including but not limited to dentists, dental hygienists, dental assistants, and dental laboratories;

(b) Subject to the provisions of this chapter, create levels of licensure or registration as appropriate for individuals providing services under this chapter. These shall consist of:

1. Dentist;

2. Dental hygienist; and

3. Dental assistant;

(c) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A for any license or registration the board may create. The administrative regulations shall, at a minimum, address:

1. Requirements for students, if appropriate;

2. Requirements for education;

3. Eligibility for licensure or registration; and

4. Renewal requirements;

1 (d) Oversee the operations and establish the organizational structure of the
 2 Office of the Kentucky Board of Dentistry, which is created and shall be
 3 attached to the board for administrative purposes. The office shall be
 4 headed by the executive director appointed under paragraph (e) of this
 5 subsection and shall be responsible for:

- 6 1. Personnel and budget matters affecting the board;
- 7 2. Fiscal activities of the board, including grant writing and
 8 disbursement of funds;
- 9 3. Information technology, including the design and maintenance of
 10 databases;
- 11 4. Licensure of dentists and dental hygienists;
- 12 5. Registration of dental assistants;
- 13 6. Investigation of complaints; and
- 14 7. Other responsibilities which may be assigned to the executive director
 15 by the board;

16 (e) Employ an executive director and fix his or her compensation. The
 17 executive director shall serve at the pleasure of the board, administer the
 18 day-to-day operations of the Office of the Kentucky Board of Dentistry, and
 19 supervise all directives of the board. The executive director shall possess a
 20 baccalaureate degree and shall have no less than five (5) years of
 21 experience in public administration;

22 (f) Employ or contract with an attorney licensed to practice law in Kentucky
 23 and fix his or her compensation. The attorney shall serve at the pleasure of
 24 the board and have primary assignment to the board;

25 (g) Employ or contract with personnel sufficient to carry out the statutory
 26 responsibilities of the board;

27 (h) Establish committees and subcommittees and the membership thereof.

Members of committees and subcommittees shall not need to be members of the board;

(i) Provide for affiliation with the American Association of Dental Boards;

(j) Select the subject matter and standards of proficiency for examinations related to issuance of licenses or registrations issued under this chapter or administrative regulations promulgated hereunder; and

(k) Have the authority to issue advisory opinions and declaratory rulings related to this chapter and the administrative regulations promulgated thereunder as established by administrative regulation.

(2) The board may utilize materials, services, or facilities as may be made available to it by other state agencies or may contract for materials, services, or facilities.

(3) The board shall develop a proposed biennial budget for all administrative and operational functions and duties.

→ SECTION 4. KRS 313.022 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The board shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, prescribe a schedule of reasonable fees, charges, and fines not to exceed the national average of other state dental boards for:

(a) Examination;

(b) Issuance, renewal, and reinstatement of licenses;

(c) Issuance, renewal, and reinstatement of registrations;

(d) Inspections and reinspections;

(e) Applications;

(f) Other services and materials provided by the board;

(g) Investigations;

(h) Administrative legal costs; and

(i) Fines for infractions.

(2) All fees, charges, or other moneys collected or received by the board shall be paid into the State Treasury and credited to a trust and agency fund which, notwithstanding KRS 45.229, shall not lapse, to be used by the board for the carrying out of the provisions of this chapter.

(3) All disbursements by the board in the transactions of its business and in the enforcement of the provisions of this chapter shall be paid out of such trust and agency account as claims against the state in accordance with the provisions of KRS Chapters 45 and 45A.

(4) The board may establish a petty cash fund not to exceed one thousand dollars (\$1,000) for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of KRS 45A.045 applying to the delegation of authority to purchase.

→ SECTION 5. KRS 313.030 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The license or registration held by a dentist, dental hygienist, or dental assistant shall be valid for a period of two (2) years.

(2) Each license or registration held by a dentist, dental hygienist, or dental assistant shall expire on December 31. A dentist's license shall expire in odd-numbered years, while all other licenses or registrations issued by the board shall expire in even-numbered years.

(3) Each license or registration held by any person issued under the provisions of this chapter shall be renewed at least biennially. Upon receipt of the application and fee, the board shall verify the accuracy of the application to determine whether the licensee or person seeking licensure or registration has met all the requirements as set forth in this chapter and in the administrative regulations promulgated by the board, and, if so, shall issue to the applicant a license or registration to practice or engage in the activity for the ensuing licensure or

1 registration period. Such license or registration shall render the holder a legal
2 practitioner of the practice or activity specified in the license or registration for
3 the period stated on it. The board shall prescribe by administrative regulation
4 promulgated in accordance with KRS Chapter 13A the beginning and ending of
5 the licensure or registration period.

6 (4) Any person who is licensed or registered by the board who allows his or her
7 license or registration to lapse by failing to renew the license or registration as
8 provided in this section may be reinstated by the board on payment of the current
9 fee for original licensure or registration in addition to any late fees and by
10 meeting the requirements of administrative regulations promulgated by the
11 board.

12 (5) An application for renewal of a license or registration shall be completed online
13 or, if a written request is made to the board prior to November 1 of the year of
14 expiration, a paper application shall be sent to the last known address of each
15 licensee or certified or registered person requesting a paper application.

16 (6) Any person engaging in any practice or activity regulated by the board during the
17 time his or her license or registration has lapsed shall be considered practicing
18 with an expired license or registration and shall be subject to the penalties
19 provided for violations of this chapter.

20 (7) Failure to receive the application for renewal of a license or registration shall not
21 relieve a dentist, dental hygienist, or dental assistant from the duty to renew his or
22 her license or registration prior to December 31 of the year in which the license
23 or registration expires.

24 (8) The duration of any license or registration issued by the board may be limited by
25 disciplinary action of the board.

26 (9) Every license or registration issued by the board shall have the seal of the board
27 affixed. A holder of a license or registration shall retain it in his or her

possession and be prepared to exhibit it upon demand by an employer or anyone to whom the holder of the license or registration offers treatment or any board or staff member of the Kentucky Board of Dentistry. Each license or registration issued by the board shall be posted in a conspicuous place in each place of employment of the dentist, dental hygienist, or dental assistant.

(10) Failure or refusal to produce a license or registration upon demand shall be prima facie evidence that no such license or registration exists.

(11) In order to ensure a proper transition during the implementation of the provisions of this section, the board may, for a period of no longer than three (3) years, extend a license or registration of any person in order to utilize the expiration date provided for in this section. The board shall, in writing, notify each person whose license or registration is extended of the extension and the new date of expiration. The extension shall be without charge.

➔SECTION 6. KRS 313.035 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to dentists. The administrative regulations shall include the classification of and licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses, and conscious sedation and anesthesia permits.

(2) Renewal programs shall be organized to include continuing education approved by the board.

(3) For the purposes of licensure of specialists the board shall only recognize fields of specialty duly recognized and approved by the American Dental Association. Individuals licensed as specialists shall not practice outside of that specialty except as provided for in charitable dentistry as defined by administrative

regulation, during a declared disaster by order of the Governor, or when the special needs of the patient require they be followed past the age of eighteen (18) by a pediatric dentist.

(4) No person licensed under this chapter, who in good faith renders emergency care at the scene of an emergency, shall be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care.

(5) Any dentist who serves on any committee, board, commission, or other entity which is duly constituted by any licensed hospital, dental society or association affiliated with the American Dental Association, dental care foundation affiliated with such dental society or association or governmental or quasi-governmental agency for the purpose of reviewing and evaluating the dental acts of other dentists, or dental auxiliary personnel, shall not be required to respond in damages for any action taken by him or her in good faith as a member of such committee, board, commission, or other entity.

(6) Licensed dentists may prescribe any drug necessary within the scope of their practice.

(7) Dentists may sign death certificates the same as physicians, when necessary in the line of their profession.

(8) Nothing in this chapter shall apply to a legally licensed doctor of medicine unless he or she practices dentistry as a specialty.

(9) Nothing in this chapter shall apply to a practitioner of dentistry duly licensed by another state or the District of Columbia while making a clinical demonstration before a dental society, convention, association of dentists, or a dental school.

→ SECTION 7. KRS 313.040 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to dental hygienists. The administrative regulations may

1 include at a minimum the classification of and licensure of dental hygienists, by
 2 examination or credentials, general supervision privileges, anesthesia
 3 registration, retirement of a license, reinstatement of a license, and charity
 4 licenses.

5 (2) Renewal programs shall be organized to include continuing education approved
 6 by the board.

7 (3) A licensed dental hygienist shall practice under the supervision, order, control,
 8 and full responsibility of a dentist licensed under this chapter and may practice:

9 (a) In a dental office, public or private school, health care facility, or
 10 government institution with a dentist on staff;

11 (b) Without the physical presence of a supervising dentist as provided in
 12 administrative regulations promulgated pursuant to subsections (6), (7),
 13 and (8) of this section; or

14 (c) Without a supervising dentist if providing screening services in accordance
 15 with subsection (9) of this section.

16 (4) It shall be unlawful for a person or corporation to practice dental hygiene in a
 17 manner that is separate or independent from the dental practice of a supervising
 18 dentist or to establish or maintain an office or practice that is primarily devoted to
 19 the provision of dental hygiene services.

20 (5) A dental hygienist may be employed by the supervising dentist or under contract
 21 with a dentist licensed under this chapter who is one (1) of the following:

22 (a) The employer of the supervising dentist;

23 (b) A shareholder in a professional association formed under KRS 274.015 of
 24 which the supervising dentist is a shareholder;

25 (c) A member or manager of a limited liability company formed under KRS
 26 275.005 of which the supervising dentist is a member or manager;

27 (d) A shareholder in a corporation formed under KRS Chapter 271B of which

1 the supervising dentist is a shareholder;

2 (e) A partner or employee of a partnership of which the supervising dentist is a
3 partner or employee; or

4 (f) A government entity that employs the dental hygienist to provide dental
5 hygiene services in a public school in connection with other programs the
6 government entity administers.

7 (6) A dental hygienist may provide the following procedures in a volunteer
8 community health setting without the supervision of a dentist:

9 (a) Dental health education;

10 (b) Nutritional counseling;

11 (c) Preparing a generalized oral screening with subsequent referral to a
12 dentist;

13 (d) Applying fluoride on patients;

14 (e) Demonstration of oral hygiene technique; and

15 (f) Sealants.

16 (7) (a) A dental hygienist may provide, for not more than fifteen (15) consecutive
17 full business days, dental hygiene services to a patient when the supervising
18 dentist is not physically present at the location at which the services are
19 provided if all the following requirements are met:

20 1. The dental hygienist has at least two (2) years with a minimum of
21 three thousand (3,000) hours of experience in the practice of dental
22 hygiene;

23 2. The dental hygienist has successfully completed a course approved by
24 the board in the identification and prevention of potential medical
25 emergencies with reregistration in this course every two (2) years;

26 3. The dental hygienist complies with written protocols for emergencies
27 the supervising dentist establishes;

- 1 4. The dental hygienist does not examine or provide dental health
2 services to a patient who has not been examined by the supervising
3 dentist within the previous seven (7) months. The supervising dentist
4 shall have completed and evaluated a medical and dental history of
5 the patient and shall have placed a written order for treatment in the
6 patient's file. The board shall promulgate administrative regulations
7 in accordance with KRS Chapter 13A to determine guidelines for the
8 written order; and
- 9 5. A patient is notified in advance of an appointment for dental hygiene
10 services when the supervising dentist will be absent from the location.
11 The patient shall be required to sign an informed consent form, prior
12 to treatment by the hygienist, acknowledging the dentist's absence.
- 13 (b) The board shall promulgate administrative regulations to determine
14 procedures the dental hygienist shall not be allowed to perform while the
15 supervising dentist is absent from the work site.
- 16 (8) A dental hygienist licensed by the board may practice as a public health hygienist
17 and may provide dental hygiene services if:
- 18 (a) The services are provided as part of a dental health program;
19 (b) The program for which the hygienist works is operated through the
20 Department for Public Health or a governing board of health; and
21 (c) The hygienist performs only accepted standardized protocols which are
22 contained within the scope of practice of dental hygiene and which are
23 reviewed and approved by the Board of Dentistry and either the Department
24 for Public Health or the dentist member of the governing board of health,
25 as set out in administrative regulation.
- 26 (9) A dental hygienist may provide screening services in any setting without the
27 supervision of a dentist if:

(a) The screening is conducted to fulfill the requirements of KRS 156.160(1)(i);

and

(b) Patients are informed that the service being provided is a screening and that only a dentist is licensed to make a definitive diagnosis of the need for dental care.

→ SECTION 8. KRS 313.045 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to define registration requirements, duties, training, and standards of practice that may be performed by a dental assistant who has a minimum of one (1) year of dental office experience.

(2) The board shall approve the instructor and the courses of study for approving duties, training, and standards of practice that may be performed by a registered dental assistant.

(3) A registered dental assistant shall practice under the supervision, order, control, and full responsibility of a dentist licensed under this chapter.

(4) The registration for each registered dental assistant shall be continuously displayed in a conspicuous place in the office of the licensee.

(5) Supervising dentists shall only assign to registered dental assistants procedures that do not require the professional competence of a licensed dentist or a licensed dental hygienist.

(6) Registered dental assistant services may include coronal polishing, a cosmetic procedure that is not essential to therapeutic oral prophylaxis, if the following criteria are observed:

(a) Polishing activities are limited to the use of a rubber cap attached to a slow-speed rotary dental handpiece;

(b) The assistant has received a certificate from the board's approved instructor

that ensures the assistant has successfully completed a dental assisting course developed by the board and a committee of dental educators from the Kentucky institutions of dental education accredited by the Council on Dental Accreditation; and

(c) The dental assisting course includes basic dental assisting and coronal polishing instruction that includes didactic, preclinical, clinical training, and competency testing.

(7) Registered dental assistant services shall not include the following:

(a) The practice of dental hygiene or the performance of the duties of a licensed dental hygienist that require the use of any instrumentation which may elicit the removal of calcareous deposits or accretions on the crowns and roots of teeth;

(b) Diagnosis;

(c) Treatment planning and prescription, including prescriptions for drugs or medicaments, or authorization for restorative, prosthodontic, or orthodontic appliances;

(d) Surgical procedures on hard or soft tissues of the oral cavity, or any other intraoral procedure that contributes to or results in an irreversible alteration of the oral anatomy; and

(e) The making of final impressions from which casts are made to construct any dental restoration.

(8) A licensed dentist may delegate the taking of radiographs to registered dental assistants who have completed a board-approved course in radiography technique and safety. The course completion certificate shall be maintained by the supervising dentist and be made available to the board upon request.

➔SECTION 9. KRS 313.050 IS REPEALED AND REENACTED TO READ AS

FOLLOWS:

(1) A licensed dentist may delegate to competent dental auxiliary personnel those procedures for which the dentist exercises direct supervision and full responsibility as long as the delegated powers do not include any of the following:

(a) Those procedures which require professional judgment and skill, such as diagnosis and treatment planning and the cutting of hard or soft tissues or any intraoral procedure which will be used directly in the fabrication of an appliance which, when worn by the patient, would come in direct contact with hard or soft tissue;

(b) Those procedures allocated by this chapter to licensed dental hygienists or registered dental assistants; and

(c) No injectable medication or anesthesia shall be administered by auxiliary personnel unless otherwise authorized by law.

(2) A licensed dentist may delegate the taking of radiographs to dental auxiliary personnel who have completed a board-approved course in radiography technique and safety. The course completion certificate shall be maintained by the supervising dentist and be available to the board upon request.

➔SECTION 10. KRS 313.060 IS REPEALED AND REENACTED TO READ
AS FOLLOWS:

(1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to dental practices which shall include minimal requirements for documentation, Centers for Disease Control compliance, conscious sedation of patients, compliance with federal controlled substances regulations, and any applicable federal statute or regulation.

(2) Any person practicing or offering to practice dentistry or dental surgery shall practice under his or her own name or the name of a deceased or incapacitated dentist for whom the person practicing dentistry has contracted to perform continuing operations.

- 1 (3) No person shall conduct a dental office in his or her name nor advertise his or
 2 her name in connection with any dental office unless he or she personally
 3 performs services as a dentist or dental surgeon in such office or personally
 4 supervises such services as are performed in such office during a portion of the
 5 time such office is operated by him or her only, and shall not use his or her name
 6 in connection with that of any other dentist, except as provided for deceased or
 7 incapacitated dentists in subsection (4) of this section.
- 8 (4) The executor or administrator of a deceased dentist's estate, or the legal guardian
 9 or authorized representative of a dentist who has become incapacitated, may
 10 contract with another dentist or dentists to continue the operations of the
 11 deceased or incapacitated dentist's practice if the practice of the deceased or
 12 incapacitated dentist is a:
- 13 (a) Sole proprietorship;
 14 (b) Corporation in which the deceased or incapacitated dentist is the sole
 15 shareholder; or
 16 (c) Limited liability company in which the deceased or incapacitated dentist is
 17 the sole member.
- 18 (5) Contracts to continue the operations of a deceased or incapacitated dentist's
 19 practice may extend until the practice is sold.
- 20 (6) Prior to contracting with another dentist or dentists to continue operations of a
 21 deceased or incapacitated dentist's practice, the executor, administrator,
 22 guardian, or authorized representative shall file a notification of intent to
 23 contract for continuation of practice with the board on a form prescribed by the
 24 board. The notification shall include the following information:
- 25 (a) The name and license number of the deceased or incapacitated dentist;
 26 (b) The name and address of the dental practice;
 27 (c) The name, address, and tax identification number of the estate;

- 1 (d) The name and license number of each dentist who will provide services in
 2 the dental practice;
- 3 (e) An affirmation, under penalty of perjury, that the information provided is
 4 true and correct and that the executor, administrator, guardian, or
 5 authorized representative understands that any interference by the executor,
 6 administrator, guardian, or authorized representative, or any agent or
 7 assignee of the executor, administrator, guardian, or authorized
 8 representative, with the contracting dentist's or dentists' practice of dentistry
 9 or professional judgment or any other violation of this chapter is grounds
 10 for an immediate termination of the operations of the dental practice; and
- 11 (f) Any other information the board deems necessary for the administration of
 12 this chapter.
- 13 (7) Within thirty (30) days after the death or incapacitation of a dentist, the executor,
 14 administrator, guardian, or authorized representative shall send notification of
 15 the death or incapacitation by mail to the last known address of each patient of
 16 record that has received treatment by the deceased or incapacitated dentist within
 17 the previous twelve (12) months, with an explanation of how copies of the
 18 practitioner's records may be obtained. This notice may also contain any other
 19 relevant information concerning the continuation of dental practice.
- 20 (8) A treating dentist who provides or facilitates the use of telehealth shall ensure:
- 21 (a) That the informed consent of the patient, or another appropriate person
 22 with authority to make the health care treatment decision for the patient, is
 23 obtained before services are provided through telehealth; and
- 24 (b) That the confidentiality of the patient's medical information is maintained
 25 as required by this chapter and other applicable law. At a minimum,
 26 confidentiality shall be maintained through appropriate processes,
 27 practices, and technology as designated by the board and that conform to

1 applicable federal law.

2 (9) The board shall promulgate administrative regulations in accordance with KRS
 3 Chapter 13A to implement this section and as necessary to:

4 (a) Prevent abuse and fraud through the use of telehealth services;

5 (b) Prevent fee-splitting through the use of telehealth services; and

6 (c) Utilize telehealth in the provision of dental services and in the provision of
 7 continuing education.

8 (10) A licensed dentist may delegate to a licensed dental hygienist the administration
 9 of block and infiltration anesthesia and nitrous oxide analgesia under the direct
 10 supervision of a dentist if the dental hygienist completes the following
 11 requirements and receives a certificate of verification from the board:

12 (a) Formal training from a dental or dental hygiene school accredited by the
 13 Commission on Dental Accreditation;

14 (b) A minimum of thirty-two (32) hours covering all of the following topics,
 15 including but not limited to anatomical considerations, basic injection
 16 technique, basic placement technique, nitrous oxide administration,
 17 recordkeeping, armamentarium exercise, local anesthesia and nitrous
 18 oxide, techniques of maxillary anesthesia, techniques of mandibular
 19 injections, partner injections and partner administration of nitrous oxide,
 20 neurophysiology, pharmacology of local anesthetics and nitrous oxide,
 21 pharmacology of vasoconstrictors, physical and psychological evaluation,
 22 local and systemic complications, and contraindications;

23 (c) A minimum of two (2) hours of clinical education for nitrous oxide
 24 administration with successful completion of administration, monitoring,
 25 and removal of nitrous oxide on at least two (2) patients;

26 (d) A minimum of twelve (12) hours demonstrating mastery of local anesthesia
 27 applications and successful completion of at least three (3) injections each

of all maxillary and mandibular injection sites; and

(e) A score that exceeds seventy-four percent (74%) on a written examination administered after coursework and clinical training.

(11) The board shall approve all continuing education courses and require them for individuals holding anesthesia registration for over one (1) year without practical application. The courses shall be developed and implemented by dental education institutions accredited by the Commission on Dental Accreditation.

→SECTION 11. A NEW SECTION OF KRS CHAPTER 313 IS CREATED TO READ AS FOLLOWS:

(1) A dental laboratory shall employ at least one (1) of the following:

(a) A certified dental technician who shall supervise all work performed in accordance with a written laboratory procedure work order issued by a dentist licensed pursuant to this chapter; or

(b) A dentist licensed pursuant to this chapter.

(2) No dentist shall use the services of any dental laboratory to construct, alter, repair, or duplicate any denture, plate, bridge, splint, orthodontic, or prosthetic appliance, without first furnishing the commercial dental laboratory a written procedure work order. Both the commercial dental laboratory and the dentist producing the work order shall keep a copy on file for two (2) years, and all laboratory procedure work orders required by this subsection shall be open to inspection by the board.

(3) A dental laboratory that employs or contracts with a dentist licensed according to this chapter may construct, alter, repair, or duplicate any denture, plate, bridge, splint, orthodontic, or prosthetic appliance without a work order from a referring dentist if the patient is seen or evaluated, or whose care is supervised by the referring dentist.

→SECTION 12. KRS 313.070 IS REPEALED AND REENACTED TO READ

1 AS FOLLOWS:

2 (1) A person who is not licensed or registered to do so, or whose license or
3 registration to do so has been suspended, revoked, or denied, shall not practice as
4 a dentist, dental hygienist, or dental assistant.

5 (2) Any person who violates subsection (1) of this section is guilty of a Class B
6 misdemeanor for the first offense and a Class A misdemeanor for each
7 subsequent offense.

8 (3) The provisions of this section shall not preclude the board from revoking or
9 increasing the suspension period of a person practicing as a dentist, dental
10 hygienist, or dental assistant who has illegally practiced while his or her license
11 or registration is under suspension or has been revoked.

12 (4) The filing of criminal charges or a criminal conviction for violation of the
13 provisions of this chapter or the administrative regulations promulgated
14 thereunder shall not preclude the board from instituting or imposing board
15 disciplinary action authorized by this chapter against any person or organization
16 violating this chapter or the administrative regulations promulgated thereunder.

17 (5) The institution or imposition of disciplinary action by the board against any
18 person or organization violating the provisions of this chapter or the
19 administrative regulations promulgated thereunder shall not preclude the filing
20 of criminal charges against or a criminal conviction of any person or
21 organization for violation of the provisions of this chapter or the administrative
22 regulations promulgated thereunder.

23 (6) (a) Nothing in this chapter shall prohibit students from performing dental
24 operations under the supervision of competent instructors approved by the
25 dental school, college, or department of a university. The board may
26 authorize the students of any dental college, school, or department of a
27 university to practice dentistry in any state or municipal institution or public

school, or under the board of health, or in a public clinic or a charitable institution. No fee shall be accepted by the student beyond the expenses provided by the stipend.

(b) Students shall be at all times under the direct supervision of a dentist licensed in this state, who is an instructor of the institution at which they are studying.

(7) Nothing in this chapter shall prohibit volunteer health practitioners providing services under KRS 39A.350 to 39A.366.

(8) Violations of this chapter shall be heard in the Circuit Court of the county in which the alleged offense occurred.

→SECTION 13. KRS 313.080 IS REPEALED AND REENACTED TO READ
AS FOLLOWS:

(1) No person shall:

(a) Call or hold himself out as or use the title dentist, dental specialist, dental hygienist, or dental assistant unless licensed or registered under the provisions of this chapter;

(b) Operate, offer to operate, or represent or advertise the operation of a dental practice of any type unless licensed by or employing individuals licensed by the board;

(c) Employ a dentist, dental hygienist, or dental assistant unless that person is licensed or registered under the provisions of this chapter; or

(d) Maintain any license or certificate authorized by this chapter if convicted of, having entered a guilty plea to, having entered an Alford plea to, or having completed a diversion program for a Class A, B, or C felony offense on or after the date of initial licensure or registration.

(2) Persons licensed or registered by the board or who are applicants for licensure or registration by the board shall be subject to disciplinary action by the board if

1 they:

2 (a) If licensed or registered by the board, violate any provision of this chapter
 3 or any administrative regulation promulgated by the board;

4 (b) Use fraud or deceit in obtaining or attempting to obtain a license or
 5 registration from the board, or are granted a license upon mistake of a
 6 material fact;

7 (c) If licensed or registered by the board, negligently act in a manner
 8 inconsistent with the practice of the discipline for which the person is
 9 licensed or registered;

10 (d) Are unable to practice a discipline regulated by the board with reasonable
 11 skill or safety or are unfit or incompetent to practice a discipline regulated
 12 by the board;

13 (e) Abuse, misuse, or misappropriate any drugs placed in the custody of the
 14 licensee or certified person for administration, or for use of others, or those
 15 drugs prescribed by the licensee;

16 (f) Falsify or fail to make essential entries on essential records;

17 (g) Are convicted of a misdemeanor which involved acts which bear directly on
 18 the qualifications or ability of the applicant, licensee, or certified person to
 19 practice the discipline for which the person is an applicant, licensee, or
 20 certified person;

21 (h) Are convicted of a misdemeanor which involved fraud, deceit, breach of
 22 trust, or physical harm or endangerment to self or others, acts which bear
 23 directly on the qualifications or ability of the applicant, licensee, or
 24 certificate holder to practice acts in the license or registration held or
 25 sought;

26 (i) Are convicted of a misdemeanor offense under KRS Chapter 510 involving
 27 a patient;

- 1 (j) Have had a license or certificate to practice as a dentist, dental hygienist, or
2 dental assistant denied, limited, suspended, probated, revoked, or otherwise
3 disciplined in Kentucky or in another jurisdiction on grounds sufficient to
4 cause a license to be denied, limited, suspended, probated, revoked, or
5 otherwise disciplined in this Commonwealth;
- 6 (k) Have a license or registration to practice any activity regulated by the board
7 denied, limited, suspended, probated, revoked, or otherwise disciplined in
8 another jurisdiction on grounds sufficient to cause a license or registration
9 to be denied, limited, suspended, probated, revoked, or otherwise disciplined
10 in this Commonwealth;
- 11 (l) Violate any lawful order or directive previously entered by the board;
- 12 (m) Have been listed on the National Practitioner Databank with a
13 substantiated finding of abuse, neglect, or misappropriation of property;
- 14 (n) Fail to notify the board in writing of any change in the person's name,
15 residential address, employment address, preferred mailing address, or
16 telephone number within thirty (30) days of the change;
- 17 (o) Fail to comply with KRS 422.317 regarding patient records; or
- 18 (p) Fail to report to the board any negative outcome related to dental treatment
19 involving intravenous or conscious sedation beyond anxiety control that
20 requires hospital admission.
- 21 (3) A person who violates subsection (1)(a), (b), (c), or (d) of this section shall be
22 guilty of a Class B misdemeanor for a first offense and a Class A misdemeanor
23 for each subsequent offense. The board shall consider each individual count of a
24 violation as a separate and subsequent offense.
- 25 (4) The provisions of this section shall not preclude prosecution for the unlawful
26 practice of dentistry by an agency of the Commonwealth.
- 27 (5) The filing of criminal charges or a criminal conviction for violation of the

provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the Office of the Board from instituting or imposing board disciplinary action authorized by this chapter against any person or organization violating this chapter or the administrative regulations promulgated thereunder.

(6) The institution or imposition of disciplinary action by the Office of the Board against any person or organization violating the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the filing of criminal charges against or a criminal conviction of any person or organization for violation of the provisions of this chapter or the administrative regulations promulgated thereunder.

➔SECTION 14. KRS 313.085 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The Law Enforcement Committee shall consist of three (3) members of the board, including at least two (2) licensed dentists, appointed by the president of the board.

(2) The Law Enforcement Committee may, by a majority vote, issue an emergency order for the immediate temporary suspension of a license or certificate against which disciplinary action or an investigation is pending if the order is necessary to protect the public.

(3) The emergency order shall be made in accordance with KRS 13B.125 and shall be based upon a finding by the board that the emergency order is in the public interest and there is substantial evidence of immediate danger to the health, welfare, and safety of any patient or the general public.

(4) A licensee may appeal the emergency order by a written request to the board for an emergency hearing in accordance with KRS 13B.125 within thirty (30) days after receipt of the order.

1 (5) The appeal of an emergency order shall address only the necessity for the action
 2 and shall not constitute an appeal of the merits of the underlying complaint or
 3 charge.

4 (6) The emergency order shall remain in effect until modified or vacated by the Law
 5 Enforcement Committee or hearing officer or superseded by final disciplinary
 6 action of the Law Enforcement Committee or hearing officer on the underlying
 7 complaint or charge.

8 (7) The Law Enforcement Committee shall expedite disciplinary hearings in which a
 9 license has been suspended under subsection (2) of this section.

10 (8) Any party aggrieved by a final order of the board may appeal the final order to
 11 the Circuit Court of the county in which the licensee or certificate holder resides
 12 after a written decision is rendered.

13 ➔SECTION 15. KRS 313.090 IS REPEALED AND REENACTED TO READ
 14 AS FOLLOWS:

15 (1) In accordance with the provisions of KRS Chapter 13B, all discipline for which
 16 the board is authorized to conduct investigations, hold hearings, and impose
 17 punishments is delegated to the executive director, board attorney, and hearing
 18 panel as provided in this section.

19 (2) Any person may make a complaint to the executive director that a dentist, dental
 20 hygienist, dental assistant, or other person licensed or registered by the board has
 21 violated a provision of this chapter, an administrative regulation promulgated
 22 pursuant to this chapter, a practice standard, or an order of the board.

23 (3) Each complaint shall:

24 (a) Be in writing;

25 (b) Identify specifically the person or organization against whom the complaint
 26 is made;

27 (c) Set forth the facts relating to the violation alleged and any other supporting

1 information which may have a bearing on the matter;

2 (d) Contain the name, address, telephone number, facsimile number, and e-
 3 mail address, if available, of the complainant; and

4 (e) Be signed by the complainant as the truth of the statements contained in the
 5 complaint by the complainant.

6 (4) A complaint which is unsigned shall not be acted upon by the executive director
 7 unless the complaint involves a violation of standards set forth by the Centers for
 8 Disease Control or alleged mental or physical impairment as provided for in
 9 Section 17 of this Act. A complaint which is not signed in the manner specified in
 10 subsection (3) of this section shall be returned to the complainant for completion.

11 (5) The executive director of the board may, on behalf of the board, based on
 12 knowledge available to the Office of the Board, make a complaint against any
 13 person or organization regulated by the board in the same manner as provided in
 14 subsection (3) of this section.

15 (6) Upon receipt of a properly completed complaint, the executive director shall
 16 assign the complaint to a staff investigator who shall investigate the complaint
 17 and shall make findings of fact and recommendations to the executive director
 18 who shall then convene a meeting of the Law Enforcement Committee.

19 (7) The staff investigator shall notify the person or organization against whom the
 20 complaint has been filed and shall notify the employer of the dentist, dental
 21 hygienist, or dental assistant of the complaint.

22 (8) The notification shall name the person or organization complained against, the
 23 complainant, the violations alleged, and the facts presented in the complaint and
 24 shall notify the person or organization complained against and the employer of:

25 (a) The fact that the complaint shall be answered, the steps for answering the
 26 complaint, and the action to be taken if the complaint is not answered;

27 (b) The timeframe and steps in the proceedings of a complaint;

1 (c) The rights of the parties, including the right to counsel; and

2 (d) The right to testify at any hearing.

3 (9) Upon the failure of a licensee or certificate holder to respond to a written
4 accusation or to request a hearing within twenty (20) days after the sending of the
5 accusation, the accused shall be considered to have admitted the truth of the facts
6 and the circumstances in the allegation and appropriate discipline may be
7 imposed.

8 (10) After reviewing the complaint and results of any investigation conducted on
9 behalf of the board, the Law Enforcement Committee shall consider whether the
10 accusation is sufficient to remand the matter for a hearing as provided in this
11 section and KRS Chapter 13B. A majority vote of the members of the Law
12 Enforcement Committee shall be necessary for action to either remand the matter
13 for hearing or dismiss the complaint without a hearing.

14 (11) If the Law Enforcement Committee dismisses the complaint, all parties notified
15 previously shall be notified of the action. If the Law Enforcement Committee
16 remands the matter for a hearing, all parties notified previously shall be notified
17 of the action.

18 (12) Each proceeding to consider the imposition of a penalty which the board is
19 authorized to impose pursuant to this chapter shall be conducted in accordance
20 with KRS Chapter 13B.

21 (13) A hearing panel for purposes of making a decision in any disciplinary matter
22 shall consist of a quorum of the remaining seven (7) members of the board who
23 are not on the Law Enforcement Committee and the hearing officer.

24 (14) The board may issue subpoenas to compel the attendance of witnesses and the
25 production of documents in the conduct of an investigation. The subpoenas may
26 be enforced by any Circuit Court for contempt. Any order or subpoena of the
27 court requiring the attendance and testimony of witnesses and the production of

1 documentary evidence may be enforced and shall be valid anywhere in this state.

2 (15) At all hearings the board attorney or, on request of the board, the Attorney
 3 General of this state or one (1) of the assistant attorneys general designated, shall
 4 appear and represent the board.

5 (16) The dentist, dental hygienist, or dental assistant who is the defendant in a
 6 hearing shall be a party to the action and may appear and testify in the matter at
 7 any deposition or hearing on the matter and may propose conclusions of law,
 8 findings of fact, and penalties to the hearing panel.

9 (17) To make a finding or impose discipline, a majority of the members of the hearing
 10 panel who are not the hearing officer shall agree on the finding or discipline.

11 (18) The final order in any disciplinary proceeding shall be prepared by the hearing
 12 officer and sent to all parties in the manner prescribed by law.

13 (19) Any person or entity aggrieved by a final order of the board may appeal the final
 14 order to the Circuit Court of the county in which the person or entity resides in
 15 accordance with KRS Chapter 13B.

16 (20) Upon final disposition of a complaint which results in disciplinary action, the
 17 final order shall be published on the Web site of the board, placed in the record of
 18 the licensed or registered individual, and reported to the National Practitioner
 19 Database.

20 ➔SECTION 16. KRS 313.100 IS REPEALED AND REENACTED TO READ
 21 AS FOLLOWS:

22 (1) If it is determined that an entity regulated by the board, a dentist, dental
 23 hygienist, dental specialist, or dental assistant has violated a statute,
 24 administrative regulation, or practice standard relating to serving as an entity
 25 regulated by the board, a dentist, dental hygienist, dental specialist, or dental
 26 assistant, the Office of the Board may impose any of the sanctions provided in
 27 subsection (2) of this section. Any party to the complaint shall have the right to

1 propose findings of fact and conclusions of law, and to recommend sanctions.

2 (2) The Office of the Board shall require an acceptable plan of correction and may
 3 use any one (1) or more of the following sanctions when disciplining a dentist,
 4 dental hygienist, dental specialist, or dental assistant or any entity regulated by
 5 the board:

6 (a) Private admonishment;

7 (b) Public reprimand;

8 (c) Fines;

9 (d) Revocation of licensure or registration;

10 (e) Suspension of licensure or registration until a time certain;

11 (f) Suspension until a certain act or acts are performed;

12 (g) Limitation of practice permanently;

13 (h) Limitation of practice until a time certain;

14 (i) Limitation of practice until a certain act or acts are performed;

15 (j) Repassing a portion of the clinical examination;

16 (k) Probation for a specified time and conditions of probation; or

17 (l) Costs of the disciplinary action as defined by administrative regulation.

18 (3) A private admonishment shall not be subject to disclosure to the public under
 19 KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action
 20 but may be used by the board for statistical purposes or in subsequent
 21 disciplinary action against the same licensee, certificate holder, or applicant.

22 (4) The filing of criminal charges or a criminal conviction for violation of the
 23 provisions of this chapter or the administrative regulations promulgated
 24 thereunder shall not preclude the Office of the Board from instituting or
 25 imposing board disciplinary action authorized by this chapter against any person
 26 or organization violating this chapter or the administrative regulations
 27 promulgated thereunder.

1 (5) The institution or imposition of disciplinary action by the Office of the Board
 2 against any person or organization violating the provisions of this chapter or the
 3 administrative regulations promulgated thereunder shall not preclude the filing
 4 of criminal charges against or a criminal conviction of any person or
 5 organization for violation of the provisions of this chapter or the administrative
 6 regulations promulgated thereunder.

7 (6) The board may maintain an action to enjoin the practice of or the attempt to
 8 practice as a dentist, dental hygienist, or dental assistant without a license or
 9 registration to do so.

10 (7) In case of a violation of any injunction granted under this section, the court may
 11 use its inherent powers for adequate relief.

12 (8) (a) Any licensee or certificate holder who has received a private admonishment
 13 may request in writing for the board to expunge the private admonishment
 14 from the licensee or certificate holder's permanent record.

15 (b) The request for expungement may be filed no sooner than three (3) years
 16 after the date on which the licensee or certificate holder has completed
 17 disciplinary sanctions imposed and if the licensee or certificate holder has
 18 not been disciplined for any subsequent violation of the same nature within
 19 this period of time.

20 (c) No person may have his record expunged under this chapter more than
 21 once.

22 (9) If it is found the person who is licensed or registered by the board has been
 23 convicted of, pled guilty to, or entered an Alford plea to a Class A, B, or C felony
 24 offense, or has completed a diversion program for a Class A, B, or C felony
 25 offense, the license or registration shall be revoked.

26 (10) A licensee subject to any disciplinary proceeding under this chapter shall be
 27 afforded an administrative hearing conducted in accordance with KRS Chapter

1 13B and may appeal any final order of the board to the Franklin Circuit Court.

2 ➔SECTION 17. KRS 313.130 IS REPEALED AND REENACTED TO READ
3 AS FOLLOWS:

4 (1) If the Law Enforcement Committee has reasonable cause to believe any licensee
5 or certificate holder or any applicant for licensure or registration by examination,
6 reinstatement, credentials, or change of status is unable to practice with
7 reasonable skill or safety or has abused alcohol or drugs, it may require such
8 person to submit to a mental or physical examination by a physician or
9 psychologist it designates. Upon the failure of the person to submit to a mental or
10 physical examination, unless due to circumstances beyond the person's control,
11 the Law Enforcement Committee may initiate an action for immediate temporary
12 suspension pursuant to this chapter or deny the application until the person
13 submits to the required examination. The Law Enforcement Committee may
14 issue an immediate and temporary suspension from the time of the examination
15 until the hearing.

16 (2) Every licensee or certificate holder or applicant for licensure or registration by
17 examination, reinstatement, credentials, or change of status shall be deemed to
18 have given consent to submit to an examination when so directed in writing by
19 the board. The direction to submit to an examination shall contain the basis of
20 the Office of the Board's reasonable cause to believe that the person is unable to
21 practice with reasonable skill or safety, or has abused alcohol or drugs. The
22 person shall be deemed to have waived all objections to the admissibility of the
23 examining physician's or psychologist's testimony or examination reports on the
24 ground of privileged communication.

25 (3) The licensee or certificate holder or applicant for licensure or registration by
26 examination, reinstatement, credentials, or change of status shall bear the cost of
27 any mental or physical examination ordered by the Office of the Board.

1 (4) The board shall establish a committee for individuals licensed or registered by the
2 board, to be designated as the Well-being Committee, to promote the early
3 identification, intervention, treatment, and rehabilitation of individuals licensed
4 or registered who may be impaired by reasons of illness, alcohol or drug abuse,
5 or as a result of any physical or mental condition. The board may enter into a
6 contractual agreement with a nonprofit corporation or a dental association for
7 the purpose of creating, supporting, and maintaining the Well-being Committee.
8 The board may promulgate administrative regulations in accordance with KRS
9 Chapter 13A to effectuate and implement the committee and may expend any
10 funds it deems necessary to adequately provide for operational expenses of the
11 committee. Any member of the Well-being Committee, as well as any
12 administrator, staff member, consultant, agent, or employee of the committee
13 acting within the scope of their duties and without actual malice, and all other
14 persons who furnish information to the committee in good faith and without
15 actual malice, shall not be liable for any claim of damages as a result of any
16 statement, decision, opinion, investigation, or action taken by the committee, or
17 by any individual member of the committee.

18 (5) All information, interviews, reports, statements, memoranda, or other documents
19 furnished to or produced by the Well-being Committee, as well as
20 communications to or from the committee, and any findings, conclusions,
21 interventions, treatment, rehabilitation, or other proceedings of the committee
22 which in any way pertain to an individual licensed or registered who may be, or
23 who actually is, impaired shall be privileged and confidential.

24 (6) All records and proceedings of the Well-being Committee which pertain or refer
25 to an individual licensed or registered who may be, or who actually is, impaired
26 shall be privileged and confidential and shall be used by the committee and its
27 members only in the exercise of the proper function of the committee and shall

1 not be considered public records and shall be subject to court subpoena and
 2 subject to discovery or introduction as evidence in any civil, criminal, or
 3 administrative proceedings except as described in subsection (4) of this section.

4 (7) The Well-being Committee may disclose information relative to an impaired
 5 licensee or certificate holder only when:

6 (a) It is essential to disclose the information to further the intervention,
 7 treatment, or rehabilitation needs of the impaired individual, and only to
 8 those persons or organizations with a need to know;

9 (b) Its release is authorized in writing by the impaired individual;

10 (c) The committee is required to make a report to the board; or

11 (d) The information is subject to court order.

12 ➔Section 18. KRS 48.315 is amended to read as follows:

13 (1) The General Assembly may provide in a budget bill for the transfer to the general
 14 fund for the purpose of the general fund all or part of the agency funds, special
 15 funds, or other funds established under the provisions of KRS 15.430; 21.347;
 16 21.540; 21.560; 42.500; 47.010; 48.010(15)(g); 56.100; 61.470; 64.345; 64.350;
 17 64.355; 95A.220; 136.392; 138.510; 161.420; 161.430; 164A.020; 164A.110;
 18 164A.800; 164A.810; 216A.110; 230.218; 230.400; 230.770; 248.540; 248.550;
 19 278.130; 278.150; 286.1-485; 304.35-030; 311.450; 311.610; 312.019; Section 4 of
 20 this Act~~[313.350]~~; 314.161; 315.195; 316.210; 317.530; 317A.080; 319.131;
 21 320.360; 321.320; 322.290; 322.330; 322.420; 323.080; 323.190; 323.210;
 22 323A.060; 323A.190; 323A.210; 324.286; 324.410; 325.250; 326.120; 327.080;
 23 330.050; 334.160; 334A.120; 335.140; 342.122; 342.480, etc.

24 (2) The transfer of moneys from the agency funds, special funds, or other funds to the
 25 general fund provided for in subsection (1) of this section shall be for the period of
 26 time specified in the budget bill.

27 (3) Any provisions of any statute in conflict with the provisions of subsections (1) and

(2) of this section are hereby suspended or modified. Any suspension or modification shall not extend beyond the duration of the budget bill.

➔Section 19. KRS 214.615 is amended to read as follows:

- (1) The licensing board or certifying entity shall require as a condition of granting a license or certificate under KRS Chapter 311A and as specified in KRS 311.450, 311.601, 312.175, Sections 5, 6, 7, and 8 of this Act~~[313.080, 313.305]~~, 314.073, 315.065, 320.280, 327.050, 333.190, 335.080, 335.090, 335.100, and 335.150 that an applicant making initial application for licensure or certification complete an educational course approved by the cabinet or the licensing board or certifying entity on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome. An applicant who has not taken a course at the time of licensure or certification shall upon an affidavit showing good cause be allowed six (6) months to complete this requirement.

- (2) The licensing board or certifying entity may promulgate administrative regulations to carry out the provisions of this section.

➔Section 20. KRS 214.620 is amended to read as follows:

- (1) The boards of the professions in KRS Chapter 311A and KRS 311.450, 311.571, 311.601, 312.085, 312.175, Sections 5, 6, 7, and 8 of this Act~~[313.040, 313.080, 313.290, 313.305]~~, 314.041, 314.042, 314.051, 314.073, 315.050, 315.065, 320.250, 320.280, 327.050, 333.100, 333.190, 335.080, 335.090, 335.100, and 335.150, and the Cabinet for Health and Family Services shall begin planning for the implementation of those sections listed above which require, as a part of initial licensure or certification, applicants for certain specified professions to complete an educational course on the transmission, control, treatment, and prevention of human immunodeficiency virus and acquired immunodeficiency syndrome. The planning shall include collecting information from the facilities and programs which educate

1 and train the licensed professionals affected by the licensure requirements of those
2 sections listed above and shall also include developing administrative regulations
3 for the implementation of the licensure requirements.

4 (2) The Cabinet for Health and Family Services shall develop, if requested by a
5 licensing board or certifying entity, instructional material on the human
6 immunodeficiency virus, including information related to methods of transmission,
7 education, and infection control. The materials developed under this section shall be
8 provided to persons licensed under KRS Chapters 317 and 317A. Costs of
9 production and distribution of the instructional materials shall be wholly assumed
10 from the fees assessed by the licensing boards which regulate the professionals who
11 are provided with educational materials under this section. To expeditiously and
12 economically develop, produce, and distribute the instructional material required
13 under this section, the Cabinet for Health and Family Services shall consult with the
14 professional associations of professions to determine whether suitable instructional
15 materials already exist that may be lawfully reproduced or reprinted.

16 (3) The Cabinet for Human Resources shall require that, by July 1, 1992, all employees
17 of health facilities defined in KRS 216B.015 shall have completed an educational
18 course on the transmission, control, treatment, and prevention of the human
19 immunodeficiency virus and acquired immunodeficiency syndrome with an
20 emphasis on appropriate behavior and attitude change except for those employees
21 who shall have completed such a course as required for their professional licensure
22 or upon evidence that the employee received such a course from another health
23 facility where the employee was previously employed.

24 (4) Information on the human immunodeficiency virus infection shall be presented to
25 any person who receives treatment at any hospital, however named, skilled-nursing
26 facilities, primary-care centers, rural health clinics, outpatient clinics, ambulatory-
27 care facilities, ambulatory surgical centers, and emergency-care centers licensed

1 pursuant to KRS Chapter 216B. The information shall include but not be limited to
 2 methods of transmission and prevention and appropriate behavior and attitude
 3 change.

- 4 (5) Notwithstanding any provision of law to the contrary, the licensing board or
 5 certifying entity of any profession required to complete the course described in
 6 subsection (1) or (2) of this section shall have the discretion to develop and approve
 7 its own instructional course to be required for the profession under the jurisdiction
 8 of the respective licensing board or certifying entity.

9 ➔Section 21. KRS 311.668 is amended to read as follows:

- 10 (1) Any person or entity who, in good faith and without compensation, renders
 11 emergency care or treatment by the use of an AED shall be immune from civil
 12 liability for any personal injury as a result of the care or treatment, or as a result of
 13 any act or failure to act in providing or arranging further medical treatment, where
 14 the person acts as an ordinary, reasonable prudent person would have acted under
 15 the same or similar circumstances.

- 16 (2) The immunity from civil liability for any personal injury under subsection (1) of this
 17 section includes the licensed physician who is involved with AED site placement,
 18 the person or entity who provides the CPR and AED site placement, the person or
 19 entity who provides the CPR and AED training, and the person or entity responsible
 20 for the site where the AED is located.

- 21 (3) The immunity from civil liability under subsection (1) of this section does not apply
 22 if the personal injury results from the gross negligence or willful or wanton
 23 misconduct of the person rendering the emergency care.

- 24 (4) The requirements of KRS 311.667 shall not apply to any individual using an AED
 25 in an emergency setting if that individual is acting as a Good Samaritan under KRS
 26 411.148 and Section 6 of this Act~~[KRS 313.257]~~.

27 ➔Section 22. KRS 313.254 is amended to read as follows:

- 1 (1) The board may grant a temporary license to a dentist or dental hygienist who holds a
 2 currently valid license from another state, district, possession, or territory of the
 3 United States for the sole purpose of providing medical care to indigent populations
 4 who may not otherwise be able to obtain such services, without expectation of
 5 compensation or charge to the individual, and without payment or reimbursement
 6 by any governmental agency or insurer. The health care services shall be provided
 7 to charitable organizations only. A temporary~~[The]~~ license issued under this
 8 section shall be valid for no more than a ten (10)~~[seven (7)]~~ day period during any
 9 given charitable event.
- 10 (2) To obtain the temporary license issued under subsection (1) of this section, the
 11 dentist or dental hygienist shall:
- 12 (a) Apply online or in writing to the Board of Dentistry at least thirty (30) days
 13 prior to providing the health care services under subsection (1) of this section;
- 14 (b) Submit himself or herself for a National Practitioner Databank query to be
 15 conducted by the board~~[Include in the application a letter from the~~
 16 ~~jurisdiction in which the dentist or dental hygienist is licensed that indicates~~
 17 ~~the applicant's license number and a statement that indicates that the dentist or~~
 18 ~~the dental hygienist is in good standing in the licensing jurisdiction; and~~
- 19 ~~(c) Pay a twenty five dollar (\$25) registration fee].~~
- 20 (3) Prior to beginning the services permitted under subsection (1) of this section, the
 21 dentist or dental hygienist shall notify the appropriate agent in the Cabinet for
 22 Health and Family Services.
- 23 (4) A dentist or dental hygienist working under this section may perform all preventive
 24 procedures and treatments including but not limited to scaling, prophylaxis,
 25 radiographs, sealants, and fluoride application.
- 26 (5) In addition to the procedures permitted under subsection (4) of this section, a dentist
 27 may perform those procedures or treatments considered to be routine in nature and

1 that are typically performed and completed in one (1) appointment. The procedures
 2 include simple extractions and basic restorative procedures. All procedures
 3 performed other than those provided in this subsection and subsection (4) of this
 4 section shall be performed by a dentist holding a currently valid license in the
 5 Commonwealth.

6 (6) A dentist or dental hygienist working under this section who registers as a charitable
 7 health care provider under KRS 216.941 shall be eligible for the provision of
 8 medical malpractice insurance procured under KRS 304.40-075.

9 (7) The board may waive the requirements of subsections (1), (2), and (3) of this
 10 section and the requirements of KRS 313.045 for a dentist or dental hygienist who
 11 volunteers to provide dental services through a nonprofit, all-volunteer charitable
 12 organization.

13 (8) The board shall promulgate administrative regulations that are reasonably necessary
 14 to administer this section.

15 **(9) Any person or organization that conducts a nonprofit charitable dentistry event**
 16 **shall be granted immunity from civil liability in accordance with KRS 411.200.**

17 ➔Section 23. (1) The staff of the Legislative Research Commission is directed
 18 to study the advantages and disadvantages of locating a Commission on Dental
 19 Accreditation (CODA) educational program specializing in the practice of dentistry or in
 20 the practice of denture technology at one of the public universities or technical colleges
 21 located in the Commonwealth of Kentucky. This study shall update the findings of
 22 Research Report No. 292, a study on the practice of dentistry in Kentucky directed by
 23 the 1998 General Assembly. This updated report shall be presented to the Interim Joint
 24 Committee on Health and Welfare by December 1, 2010.

25 (2) Interested persons at the University of Kentucky, University of Louisville, and
 26 in the Kentucky Community and Technical College System are encouraged to study the
 27 feasibility of adding an accredited dentistry program, or similar program focusing on

denture technology, to their available courses of study and report their findings to the Interim Joint Committee on Health and Welfare by December 1, 2010.

(3) Provisions of this Act to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

→SECTION 24. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

Persons and agencies that file a complaint, provide sworn or written statements, or otherwise participate in an investigation or administrative proceeding instituted pursuant to this chapter shall have immunity from civil or criminal prosecution that is based upon such information unless the person or agency committed perjury, acted in bad faith, or acted with gross negligence, recklessness, or malicious purpose.

→SECTION 25. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

A licensee, credentialed holder, privilege holder, or applicant who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation, including responding to a complaint or lawful request for information in a materially factual and timely manner.

→Section 26. KRS 156.070 is amended to read as follows:

(1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be

1 approved by the board, and provided further that any administrative hearing
2 conducted by the designated managing organization or agency shall be conducted in
3 accordance with KRS Chapter 13B.

4 (a) The state board or its designated agency shall assure through promulgation of
5 administrative regulations that if a secondary school sponsors or intends to
6 sponsor an athletic activity or sport that is similar to a sport for which
7 National Collegiate Athletic Association members offer an athletic
8 scholarship, the school shall sponsor the athletic activity or sport for which a
9 scholarship is offered. The administrative regulations shall specify which
10 athletic activities are similar to sports for which National Collegiate Athletic
11 Association members offer scholarships.

12 (b) Beginning with the 2003-2004 school year, the state board shall require any
13 agency or organization designated by the state board to manage interscholastic
14 athletics to adopt bylaws that establish as members of the agency's or
15 organization's board of control one (1) representative of nonpublic member
16 schools who is elected by the nonpublic school members of the agency or
17 organization from regions one (1) through eight (8) and one (1) representative
18 of nonpublic member schools who is elected by the nonpublic member
19 schools of the agency or organization from regions nine (9) through sixteen
20 (16). The nonpublic school representatives on the board of control shall not be
21 from classification A1 or D1 schools. Following initial election of these
22 nonpublic school representatives to the agency's or organization's board of
23 control, terms of the nonpublic school representatives shall be staggered so
24 that only one (1) nonpublic school member is elected in each even-numbered
25 year.

26 (c) The state board or any agency designated by the state board to manage
27 interscholastic athletics shall not promulgate rules, administrative regulations,

1 or bylaws that prohibit pupils in grades seven (7) to eight (8) from
 2 participating in any high school sports except for high school varsity soccer
 3 and football, or from participating on more than one (1) school-sponsored
 4 team at the same time in the same sport. The Kentucky Board of Education, or
 5 an agency designated by the board to manage interscholastic athletics, may
 6 promulgate administrative regulations restricting, limiting, or prohibiting
 7 participation in high school varsity soccer and football for students who have
 8 not successfully completed the eighth grade.

9 (d) Every local board of education shall require an annual medical examination
 10 performed and signed by a physician, physician assistant, advanced practice
 11 registered nurse[~~practitioner~~], or chiropractor, if performed within the
 12 professional's scope of practice, for each student seeking eligibility to
 13 participate in any high school athletic activity or sport. The Kentucky Board of
 14 Education or any organization or agency designated by the state board to
 15 manage interscholastic athletics shall not promulgate administrative
 16 regulations or adopt any policies or bylaws that are contrary to the provisions
 17 of this paragraph.

18 (e) Any student who turns nineteen (19) years of age prior to August 1 shall not
 19 be eligible for high school athletics in Kentucky. Any student who turns
 20 nineteen (19) years of age on or after August 1 shall remain eligible for that
 21 school year only. An exception to the provisions of this paragraph shall be
 22 made, and the student shall be eligible for high school athletics in Kentucky if
 23 the student:

- 24 1. Qualified for exceptional children services and had an individual
 25 education program developed by an admissions and release committee
 26 (ARC) while the student was enrolled in the primary school program;
- 27 2. Was retained in the primary school program because of an ARC

1 committee recommendation; and

2 3. Has not completed four (4) consecutive years or eight (8) consecutive
3 semesters of eligibility following initial promotion from grade eight (8)
4 to grade nine (9).

5 (f) If the state board or any agency designated by the state board to manage
6 interscholastic athletics promulgates administrative regulations that permit a
7 school district to employ or assign nonteaching personnel to serve in a
8 coaching position, those administrative regulations shall apply to all sports
9 and sports activities, including basketball and football. The administrative
10 regulations shall give preference to the hiring or assignment of certified
11 personnel over nonteaching personnel in coaching positions.

12 (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State
13 Property and Buildings Commission, or others, whether public or private, any
14 lands, buildings, structures, installations, and facilities suitable for use in
15 establishing and furthering television and related facilities as an aid or
16 supplement to classroom instruction, throughout the Commonwealth, and for
17 incidental use in any other proper public functions. The lease may be for any
18 initial term commencing with the date of the lease and ending with the next
19 ensuing June 30, which is the close of the then-current fiscal biennium of the
20 Commonwealth, with exclusive options in favor of the board to renew the
21 same for successive ensuing bienniums, July 1 in each even year to June 30 in
22 the next ensuing even year; and the rentals may be fixed at the sums in each
23 biennium, if renewed, sufficient to enable the State Property and Buildings
24 Commission to pay therefrom the maturing principal of and interest on, and
25 provide reserves for, any revenue bonds which the State Property and
26 Buildings Commission may determine to be necessary and sufficient, in
27 agreement with the board, to provide the cost of acquiring the television and

1 related facilities, with appurtenances, and costs as may be incident to the
2 issuance of the bonds.

3 (b) Each option of the Kentucky Board of Education to renew the lease for a
4 succeeding biennial term may be exercised at any time after the adjournment
5 of the session of the General Assembly at which appropriations shall have
6 been made for the operation of the state government for such succeeding
7 biennial term, by notifying the State Property and Buildings Commission in
8 writing, signed by the chief state school officer, and delivered to the secretary
9 of the Finance and Administration Cabinet as a member of the commission.
10 The option shall be deemed automatically exercised, and the lease
11 automatically renewed for the succeeding biennium, effective on the first day
12 thereof, unless a written notice of the board's election not to renew shall have
13 been delivered in the office of the secretary of the Finance and Administration
14 Cabinet before the close of business on the last working day in April
15 immediately preceding the beginning of the succeeding biennium.

16 (c) The Kentucky Board of Education shall not itself operate leased television
17 facilities, or undertake the preparation of the educational presentations or
18 films to be transmitted thereby, but may enter into one (1) or more contracts to
19 provide therefor, with any public agency and instrumentality of the
20 Commonwealth having, or able to provide, a staff with proper technical
21 qualifications, upon which agency and instrumentality the board, through the
22 chief state school officer and the Department of Education, is represented in
23 such manner as to coordinate matters of curriculum with the curricula
24 prescribed for the public schools of the Commonwealth. Any contract for the
25 operation of the leased television or related facilities may permit limited and
26 special uses of the television or related facilities for other programs in the
27 public interest, subject to the reasonable terms and conditions as the board and

1 the operating agency and instrumentality may agree upon; but any contract
2 shall affirmatively forbid the use of the television or related facilities, at any
3 time or in any manner, in the dissemination of political propaganda or in
4 furtherance of the interest of any political party or candidate for public office,
5 or for commercial advertising. No lease between the board and the State
6 Property and Buildings Commission shall bind the board to pay rentals for
7 more than one (1) fiscal biennium at a time, subject to the aforesaid renewal
8 options. The board may receive and may apply to rental payments under any
9 lease and to the cost of providing for the operation of the television or related
10 facilities not only appropriations which may be made to it from state funds,
11 from time to time, but also contributions, gifts, matching funds, devises, and
12 bequests from any source, whether federal or state, and whether public or
13 private, so long as the same are not conditioned upon any improper use of the
14 television or related facilities in a manner inconsistent with the provisions of
15 this subsection.

16 (4) The state board may, on the recommendation and with the advice of the chief state
17 school officer, prescribe, print, publish, and distribute at public expense such
18 administrative regulations, courses of study, curriculums, bulletins, programs,
19 outlines, reports, and placards as each deems necessary for the efficient
20 management, control, and operation of the schools and programs under its
21 jurisdiction. All administrative regulations published or distributed by the board
22 shall be enclosed in a booklet or binder on which the words "informational copy"
23 shall be clearly stamped or printed.

24 (5) Upon the recommendation of the chief state school officer or his designee, the state
25 board shall establish policy or act on all matters relating to programs, services,
26 publications, capital construction and facility renovation, equipment, litigation,
27 contracts, budgets, and all other matters which are the administrative responsibility

1 of the Department of Education.

2 ➔Section 27. KRS 156.160 is amended to read as follows:

3 (1) With the advice of the Local Superintendents Advisory Council, the Kentucky
4 Board of Education shall promulgate administrative regulations establishing
5 standards which school districts shall meet in student, program, service, and
6 operational performance. These regulations shall comply with the expected
7 outcomes for students and schools set forth in KRS 158.6451. Administrative
8 regulations shall be promulgated for the following:

9 (a) Courses of study for the different grades and kinds of common schools
10 identifying the common curriculum content directly tied to the goals,
11 outcomes, and assessment strategies developed under KRS 158.645,
12 158.6451, and 158.6453 and distributed to local school districts and schools.

13 The administrative regulations shall provide that:

- 14 1. If a school offers American sign language, the course shall be accepted
15 as meeting the foreign language requirements in common schools
16 notwithstanding other provisions of law; and
- 17 2. If a school offers the Reserve Officers Training Corps program, the
18 course shall be accepted as meeting the physical education requirement
19 for high school graduation notwithstanding other provisions of law;

20 (b) Courses of study or educational experiences available to students in all middle
21 and high schools to fulfill the prerequisites for courses in advanced science
22 and mathematics as defined in KRS 158.845;

23 (c) The acquisition and use of educational equipment for the schools as
24 recommended by the Council for Education Technology;

25 (d) The minimum requirements for high school graduation in light of the expected
26 outcomes for students and schools set forth in KRS 158.6451. Student scores
27 from any assessment administered under KRS 158.6453 that are determined

1 by the National Technical Advisory Panel to be valid and reliable at the
2 individual level shall be included on the student transcript. The National
3 Technical Advisory Panel shall submit its determination to the commissioner
4 of education and the Legislative Research Commission;

5 (e) Taking and keeping a school census, and the forms, blanks, and software to be
6 used in taking and keeping the census and in compiling the required reports.
7 The board shall create a statewide student identification numbering system
8 based on students' Social Security numbers. The system shall provide a
9 student identification number similar to, but distinct from, the Social Security
10 number, for each student who does not have a Social Security number or
11 whose parents or guardians choose not to disclose the Social Security number
12 for the student;

13 (f) Sanitary and protective construction of public school buildings, toilets,
14 physical equipment of school grounds, school buildings, and classrooms. With
15 respect to physical standards of sanitary and protective construction for school
16 buildings, the Kentucky Board of Education shall adopt the Uniform State
17 Building Code;

18 (g) Medical inspection, physical and health education and recreation, and other
19 regulations necessary or advisable for the protection of the physical welfare
20 and safety of the public school children. The administrative regulations shall
21 set requirements for student health standards to be met by all students in
22 grades four (4), eight (8), and twelve (12) pursuant to the outcomes described
23 in KRS 158.6451. The administrative regulations shall permit a student who
24 received a physical examination no more than six (6) months prior to his
25 initial admission to Head Start to substitute that physical examination for the
26 physical examination required by the Kentucky Board of Education of all
27 students upon initial admission to the public schools, if the physical

examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(h) A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a three (3), four (4), five (5), or six (6) year-old child is enrolled in a public school, public preschool, or Head Start program;

(i) 1. Beginning with the 2010-2011 school year, a dental screening or examination by a dentist, dental hygienist, physician, registered nurse, advanced practice registered nurse~~-practitioner~~, or physician assistant that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a dental screening or examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a five (5) or six (6) year-old child is enrolled in a public school.

2. A child shall be referred to a licensed dentist if a dental screening or examination performed by anyone other than a licensed dentist identifies the possibility of dental disease;

(j) The transportation of children to and from school;

(k) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(l) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

1 (m) A uniform series of forms and blanks, educational and financial, including
 2 forms of contracts, for use in the several school districts; and

3 (n) The disposal of real and personal property owned by local boards of
 4 education.

5 (2) (a) At the request of a local board of education or a school council, a local school
 6 district superintendent shall request that the Kentucky Board of Education
 7 waive any administrative regulation promulgated by that board. Beginning in
 8 the 1996-97 school year, a request for waiver of any administrative regulation
 9 shall be submitted to the Kentucky Board of Education in writing with
 10 appropriate justification for the waiver. The Kentucky Board of Education
 11 may approve the request when the school district or school has demonstrated
 12 circumstances that may include but are not limited to the following:

- 13 1. An alternative approach will achieve the same result required by the
 14 administrative regulation;
- 15 2. Implementation of the administrative regulation will cause a hardship on
 16 the school district or school or jeopardize the continuation or
 17 development of programs; or
- 18 3. There is a finding of good cause for the waiver.

19 (b) The following shall not be subject to waiver:

- 20 1. Administrative regulations relating to health and safety;
- 21 2. Administrative regulations relating to civil rights;
- 22 3. Administrative regulations required by federal law; and
- 23 4. Administrative regulations promulgated in accordance with KRS
 24 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to
 25 measurement of performance outcomes and determination of successful
 26 districts or schools, except upon issues relating to the grade
 27 configuration of schools.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

(4) Any public school that violates the provisions of KRS 158.854 shall be subject to a penalty to be assessed by the commissioner of education as follows:

(a) The first violation shall result in a fine of no less than one (1) week's revenue from the sale of the competitive food;

(b) Subsequent violations shall result in a fine of no less than one (1) month's revenue from the sale of the competitive food;

(c) "Habitual violations," which means five (5) or more violations within a six (6) month period, shall result in a six (6) month ban on competitive food sales for the violating school; and

(d) Revenue collected as a result of the fines in this subsection shall be transferred to the food service fund of the local school district.

➔Section 28. KRS 156.4975 is amended to read as follows:

As used in KRS 156.496, 156.4975, and 156.4977:

(1) "Core component" means one (1) of the activities or services for children and their families provided by a family resource or youth services center required by KRS 156.496;

(2) "Health services" means preventive and health care services provided in a school setting and includes but is not limited to supplemental classroom instructional services related to health by an advanced practice registered nurse~~[-practitioner]~~, registered nurse, or licensed practical nurse;

1 (3) "Optional component" means one (1) of the activities or services provided for
 2 children or their families as part of the implementation of a family resource or youth
 3 services center in addition to those required by KRS 156.496 and designed to satisfy
 4 unique community needs; and

5 (4) "Secretary" means the secretary of the Cabinet for Health and Family Services.

6 ➔Section 29. KRS 156.502 is amended to read as follows:

7 (1) As used in this section:

8 (a) "Health services" means the provision of direct health care, including the
 9 administration of medication; the operation, maintenance, or health care
 10 through the use of medical equipment; or the administration of clinical
 11 procedures. "Health services" does not include first aid or emergency
 12 procedures; and

13 (b) "School employee" means an employee of the public schools of this
 14 Commonwealth.

15 (2) Health services shall be provided, within the health care professional's current scope
 16 of practice, in a school setting by:

17 (a) A physician who is licensed under the provisions of KRS Chapter 311;

18 (b) An advanced practice registered nurse~~[-practitioner]~~, registered nurse, or
 19 licensed practical nurse who is licensed under the provisions of KRS Chapter
 20 314; or

21 (c) A school employee who is delegated responsibility to perform the health
 22 service by a physician, advanced practice registered nurse~~[-practitioner]~~, or
 23 registered nurse; and

24 1. Has been trained by the delegating physician or delegating nurse for the
 25 specific health service, if that health service is one that could be
 26 delegated by the physician or nurse within his or her scope of practice;
 27 and

- 1 2. Has been approved in writing by the delegating physician or delegating
2 nurse. The approval shall state that the school employee consents to
3 perform the health service when the employee does not have the
4 administration of health services in his or her contract or job description
5 as a job responsibility, possesses sufficient training and skills, and has
6 demonstrated competency to safely and effectively perform the health
7 service. The school employee shall acknowledge receipt of training by
8 signing the approval form. A copy of the approval form shall be
9 maintained in the student's record and the personnel file of the school
10 employee. A delegation to a school employee under this paragraph shall
11 be valid only for the current school year.
- 12 (3) If no school employee has been trained and delegated responsibility to perform a
13 health service, the school district shall make any necessary arrangement for the
14 provision of the health service to the student in order to prevent a loss of a health
15 service from affecting the student's attendance or program participation. The school
16 district shall continue with this arrangement until appropriate school personnel are
17 delegated the responsibility for health care in subsection (2) of this section.
- 18 (4) A school employee who has been properly delegated responsibility for performing a
19 medical procedure under this section shall act as an agent of the school and be
20 granted liability protection under the Federal Paul P. Coverdell Teacher Liability
21 Protection Act of 2001, Pub. L. No. 107-110, unless the claimant establishes by
22 clear and convincing evidence that harm was proximately caused by an act or
23 omission of the school employee that constitutes negligence, willful or criminal
24 misconduct, or a conscious, flagrant indifference to the rights and safety of the
25 individual harmed.
- 26 (5) Nothing in this section shall be construed to deny a student his or her right to attend
27 public school and to receive public school services, or to deny, prohibit, or limit the

1 administration of emergency first aid or emergency procedures.

2 ➔Section 30. KRS 159.030 is amended to read as follows:

3 (1) The board of education of the district in which the child resides shall exempt from
4 the requirement of attendance upon a regular public day school every child of
5 compulsory school age:

6 (a) Who is a graduate from an accredited or an approved four (4) year high
7 school; or

8 (b) Who is enrolled and in regular attendance in a private, parochial, or church
9 regular day school. It shall be the duty of each private, parochial, or church
10 regular day school to notify the local board of education of those students in
11 attendance at the school. If a school declines, for any reason, to notify the
12 local board of education of those students in attendance, it shall so notify each
13 student's parent or legal guardian in writing, and it shall then be the duty of the
14 parent or legal guardian to give proper notice to the local board of education;
15 or

16 (c) Who is less than seven (7) years old and is enrolled and in regular attendance
17 in a private kindergarten-nursery school; or

18 (d) Whose physical or mental condition prevents or renders inadvisable
19 attendance at school or application to study; or

20 (e) Who is enrolled and in regular attendance in private, parochial, or church
21 school programs for exceptional children; or

22 (f) Who is enrolled and in regular attendance in a state-supported program for
23 exceptional children;

24 (g) For purposes of this section, "church school" shall mean a school operated as
25 a ministry of a local church, group of churches, denomination, or association
26 of churches on a nonprofit basis.

27 (2) Before granting an exemption under subsection (1)(d) of this section, the board of

1 education of the district in which the child resides shall require satisfactory
2 evidence, in the form of:

- 3 (a) A signed statement of a licensed physician, advanced practice registered
4 nurse~~[-practitioner]~~, psychologist, psychiatrist, chiropractor, or public health
5 officer, that the condition of the child prevents or renders inadvisable
6 attendance at school or application to study. On the basis of such evidence, the
7 board may exempt the child from compulsory attendance. Any child who is
8 excused from school attendance more than six (6) months shall have two (2)
9 signed statements from a combination of the following professional persons: a
10 licensed physician, advanced practice registered nurse~~[-practitioner]~~,
11 psychologist, psychiatrist, chiropractor, and health officer, except that this
12 requirement shall not apply to a child whose treating physician, advanced
13 practice registered nurse~~[-practitioner]~~, chiropractor, or public health officer
14 certifies that the student has a chronic physical condition that prevents or
15 renders inadvisable attendance at school or application to study and is unlikely
16 to substantially improve within one (1) year; or
- 17 (b) An individual education plan specifying that placement of the child with a
18 disability at home or in a hospital is the least restrictive environment for
19 providing services.

20 Exemptions of all children under the provisions of subsection (1)(d) of this section
21 shall be reviewed annually with the evidence required being updated, except that for
22 an exceptional child whose treating physician, advanced practice registered nurse~~[-practitioner]~~,
23 chiropractor, or public health officer certifies that the student has a
24 chronic physical condition unlikely to substantially improve within three (3) years,
25 the child's admissions and release committee shall annually consider the child's
26 condition and the existing documentation to determine whether updated evidence is
27 required. Updated evidence shall be provided for a child upon determination of

1 need by the admissions and release committee, or at least every three (3) years.

2 (3) For any child who is excluded under the provisions of subsection (1)(d) of this
3 section, home, hospital, institutional, or other regularly scheduled and suitable
4 instruction meeting standards, rules, and regulations of the Kentucky Board of
5 Education shall be provided.

6 ➔Section 31. KRS 186.042 is amended to read as follows:

7 (1) For the purposes of this section, "persons with disabilities which limit or impair the
8 ability to walk" means persons who, as determined by a licensed physician:

- 9 (a) Cannot walk two hundred (200) feet or sixty-one (61) meters without stopping
10 to rest;
- 11 (b) Cannot walk without the use of, or assistance from, a brace, cane, crutch,
12 another person, prosthetic device, wheelchair, or other assistant device;
- 13 (c) Are restricted by lung disease to the extent that the person's forced respiratory
14 and expiratory volume for one (1) second, when measured by spirometry, is
15 less than one (1) liter, or the arterial oxygen tension is less than sixty (60)
16 mm/hg on room air at rest;
- 17 (d) Use portable oxygen;
- 18 (e) Have a cardiac condition to the extent that the person's functional limitations
19 are classified in severity as Class III or Class IV according to standards set by
20 the American Heart Association; or
- 21 (f) Are severely limited in their ability to walk due to an arthritic, neurological, or
22 orthopedic condition.

23 (2) On the application of any person with disabilities which limit or impair the ability to
24 walk, who has lost the use of an arm or both arms, or who is blind, the
25 Transportation Cabinet shall issue the person with a disability an accessible parking
26 registration plate or renewal decal designating the vehicle licensed as being owned
27 by or leased by a person with a disability. The license plate or renewal decal may be

1 issued for a passenger car as set forth in KRS 186.050(1), for a motorcycle as set
 2 forth in KRS 186.050(2), or for a commercial vehicle as set forth in KRS
 3 186.050(3)(a). The registration plates issued shall bear the international symbol of
 4 access adopted by Rehabilitation International in 1969, reading from left to right
 5 and shall be followed by numbers or letters the cabinet finds expedient. The cabinet
 6 shall not issue the registration plates so designated to any person other than a person
 7 with a disability as described above. The fee for a disabled license plate shall be as
 8 established in KRS 186.162.

9 (3) The application for a license plate for a person with a disability shall be made on a
 10 form prepared by the Transportation Cabinet. For every person seeking this
 11 accessible parking license plate, proof of the disability shall be required by:

12 (a) The county clerk issuing the license plate ascertaining that the applicant is
 13 obviously disabled as described in this section; or

14 (b) A statement from a licensed physician or advanced practice registered nurse{
 15 ~~practitioner~~} that the applicant is a person with disabilities which limit or
 16 impair the ability to walk, a person who has lost the use of an arm, or any
 17 person who is blind.

18 (4) When a motor vehicle bearing plates issued to a person with a disability as
 19 prescribed in this section is being operated by or for the benefit of the person with a
 20 disability, who is in the motor vehicle when the motor vehicle is being operated, the
 21 motor vehicle may be parked for a period of two (2) hours in excess of the legal
 22 parking period permitted by local authorities, except if local ordinances or police
 23 regulations prohibit parking on a highway for the purpose of creating a fire lane; if
 24 the ordinances or police regulations provide for the accommodation of heavy traffic
 25 during morning, afternoon, or evening hours; or if the motor vehicle is parked in
 26 such a manner as to clearly be a traffic hazard.

27 (5) Registration under this section shall expire July 31.

1 ➔Section 32. KRS 194A.454 is amended to read as follows:

- 2 (1) A legend drug or supplies used to administer a legend drug may be accepted and
 3 dispensed under the program established in KRS 194A.452 only if the following
 4 requirements are met:
- 5 (a) The legend drug or supplies needed to administer the legend drug is in its
 6 original, unopened, sealed, and tamper-evident unit dose packaging or, if
 7 packaged in single-unit doses, the single-unit dose packaging is unopened;
- 8 (b) The legend drug is not classified as a controlled substance;
- 9 (c) The legend drug or supplies needed to administer a legend drug is not
 10 adulterated or misbranded, as determined by a pharmacist employed by, or
 11 under contract with, the health facility or pharmacy, who shall inspect the drug
 12 or supplies needed to administer a legend drug before the drug or supplies are
 13 dispensed; and
- 14 (d) The legend drug or supplies needed to administer a legend drug are prescribed
 15 by a physician, advanced practice registered nurse~~[-practitioner]~~, or physician
 16 assistant and dispensed by a pharmacist.
- 17 (2) No legend drug or supplies needed to administer a legend drug that are donated for
 18 use under this section may be resold.

19 ➔Section 33. KRS 202A.161 is amended to read as follows:

20 Any person admitted to a hospital pursuant to the provisions of this chapter shall be
 21 initially examined by an authorized staff physician of the hospital or, with permission of
 22 the facility's governing body and in accordance with the applicable provisions of the
 23 facility's medical staff bylaws, policies, and procedures, a physician assistant as defined in
 24 KRS 311.550, or an advanced practice registered nurse~~[-practitioner]~~ licensed under KRS
 25 Chapter 314 as soon as practicable but not later than thirty-six (36) hours (excluding
 26 weekends and holidays) and a report entered into the medical record not later than forty-
 27 eight (48) hours (excluding weekends and holidays) after his admission.

➔Section 34. KRS 205.560 is amended to read as follows:

(1) The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health and family services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including but not limited to the following categories, except where the aid is for the purpose of obtaining an abortion:

- (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
- (b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
- (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist. For purposes of this paragraph, drugs shall include products for the treatment of inborn errors of metabolism or genetic conditions, consisting of therapeutic food, formulas, supplements, or low-

protein modified food products that are medically indicated for therapeutic treatment and are administered under the direction of a physician, and include but are not limited to the following conditions:

1. Phenylketonuria;
2. Hyperphenylalaninemia;
3. Tyrosinemia (types I, II, and III);
4. Maple syrup urine disease;
5. A-ketoacid dehydrogenase deficiency;
6. Isovaleryl-CoA dehydrogenase deficiency;
7. 3-methylcrotonyl-CoA carboxylase deficiency;
8. 3-methylglutaconyl-CoA hydratase deficiency;
9. 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG-CoA lyase deficiency);
10. B-ketothiolase deficiency;
11. Homocystinuria;
12. Glutaric aciduria (types I and II);
13. Lysinuric protein intolerance;
14. Non-ketotic hyperglycinemia;
15. Propionic acidemia;
16. Gyrate atrophy;
17. Hyperornithinemia/hyperammonemia/homocitrullinuria syndrome;
18. Carbamoyl phosphate synthetase deficiency;
19. Ornithine carbamoyl transferase deficiency;
20. Citrullinemia;
21. Arginosuccinic aciduria;
22. Methylmalonic acidemia; and
23. Argininemia;

- 1 (d) Physician, podiatric, and dental services;
- 2 (e) Optometric services for all age groups shall be limited to prescription services,
3 services to frames and lenses, and diagnostic services provided by an
4 optometrist, to the extent the optometrist is licensed to perform the services
5 and to the extent the services are covered in the ophthalmologist portion of the
6 physician's program. Eyeglasses shall be provided only to children under age
7 twenty-one (21);
- 8 (f) Drugs on the prescription of a physician used to prevent the rejection of
9 transplanted organs if the patient is indigent;
- 10 (g) Nonprofit neighborhood health organizations or clinics where some or all of
11 the medical services are provided by licensed registered nurses or by advanced
12 medical students presently enrolled in a medical school accredited by the
13 Association of American Medical Colleges and where the students or licensed
14 registered nurses are under the direct supervision of a licensed physician who
15 rotates his services in this supervisory capacity between two (2) or more of the
16 nonprofit neighborhood health organizations or clinics specified in this
17 paragraph;
- 18 (h) Services provided by health-care delivery networks as defined in KRS
19 216.900;
- 20 (i) Services provided by midlevel health-care practitioners as defined in KRS
21 216.900; and
- 22 (j) Smoking cessation treatment interventions or programs prescribed by a
23 physician, advanced practice registered nurse[~~practitioner~~], physician
24 assistant, or dentist, including but not limited to counseling, telephone
25 counseling through a quitline, recommendations to the recipient that smoking
26 should be discontinued, and prescription and over-the-counter medications
27 and nicotine replacement therapy approved by the United States Food and

1 Drug Administration for smoking cessation.

2 (2) Payments for hospital care, nursing-home care, and drugs or other medical,
3 ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount
4 of the payment to the cost of providing the services or supplies. It shall be one (1) of
5 the functions of the council to make recommendations to the Cabinet for Health and
6 Family Services with respect to the bases for payment. In determining the rates of
7 reimbursement for long-term-care facilities participating in the Medical Assistance
8 Program, the Cabinet for Health and Family Services shall, to the extent permitted
9 by federal law, not allow the following items to be considered as a cost to the
10 facility for purposes of reimbursement:

11 (a) Motor vehicles that are not owned by the facility, including motor vehicles
12 that are registered or owned by the facility but used primarily by the owner or
13 family members thereof;

14 (b) The cost of motor vehicles, including vans or trucks, used for facility business
15 shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted
16 annually for inflation according to the increase in the consumer price index-u
17 for the most recent twelve (12) month period, as determined by the United
18 States Department of Labor. Medically equipped motor vehicles, vans, or
19 trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation.
20 Costs exceeding this limit shall not be reimbursable and shall be borne by the
21 facility. Costs for additional motor vehicles, not to exceed a total of three (3)
22 per facility, may be approved by the Cabinet for Health and Family Services if
23 the facility demonstrates that each additional vehicle is necessary for the
24 operation of the facility as required by regulations of the cabinet;

25 (c) Salaries paid to immediate family members of the owner or administrator, or
26 both, of a facility, to the extent that services are not actually performed and are
27 not a necessary function as required by regulation of the cabinet for the

- 1 operation of the facility. The facility shall keep a record of all work actually
 2 performed by family members;
- 3 (d) The cost of contracts, loans, or other payments made by the facility to owners,
 4 administrators, or both, unless the payments are for services which would
 5 otherwise be necessary to the operation of the facility and the services are
 6 required by regulations of the Cabinet for Health and Family Services. Any
 7 other payments shall be deemed part of the owner's compensation in
 8 accordance with maximum limits established by regulations of the Cabinet for
 9 Health and Family Services. Interest paid to the facility for loans made to a
 10 third party may be used to offset allowable interest claimed by the facility;
- 11 (e) Private club memberships for owners or administrators, travel expenses for
 12 trips outside the state for owners or administrators, and other indirect
 13 payments made to the owner, unless the payments are deemed part of the
 14 owner's compensation in accordance with maximum limits established by
 15 regulations of the Cabinet for Health and Family Services; and
- 16 (f) Payments made to related organizations supplying the facility with goods or
 17 services shall be limited to the actual cost of the goods or services to the
 18 related organization, unless it can be demonstrated that no relationship
 19 between the facility and the supplier exists. A relationship shall be considered
 20 to exist when an individual, including brothers, sisters, father, mother, aunts,
 21 uncles, and in-laws, possesses a total of five percent (5%) or more of
 22 ownership equity in the facility and the supplying business. An exception to
 23 the relationship shall exist if fifty-one percent (51%) or more of the supplier's
 24 business activity of the type carried on with the facility is transacted with
 25 persons and organizations other than the facility and its related organizations.
- 26 (3) No vendor payment shall be made unless the class and type of medical care
 27 rendered and the cost basis therefor has first been designated by regulation.

- 1 (4) The rules and regulations of the Cabinet for Health and Family Services shall
2 require that a written statement, including the required opinion of a physician, shall
3 accompany any claim for reimbursement for induced premature births. This
4 statement shall indicate the procedures used in providing the medical services.
- 5 (5) The range of medical care benefit standards provided and the quality and quantity
6 standards and the methods for determining cost formulae for vendor payments
7 within each category of public assistance and other recipients shall be uniform for
8 the entire state, and shall be designated by regulation promulgated within the
9 limitations established by the Social Security Act and federal regulations. It shall
10 not be necessary that the amount of payments for units of services be uniform for
11 the entire state but amounts may vary from county to county and from city to city, as
12 well as among hospitals, based on the prevailing cost of medical care in each locale
13 and other local economic and geographic conditions, except that insofar as allowed
14 by applicable federal law and regulation, the maximum amounts reimbursable for
15 similar services rendered by physicians within the same specialty of medical
16 practice shall not vary according to the physician's place of residence or place of
17 practice, as long as the place of practice is within the boundaries of the state.
- 18 (6) Nothing in this section shall be deemed to deprive a woman of all appropriate
19 medical care necessary to prevent her physical death.
- 20 (7) To the extent permitted by federal law, no medical assistance recipient shall be
21 recertified as qualifying for a level of long-term care below the recipient's current
22 level, unless the recertification includes a physical examination conducted by a
23 physician licensed pursuant to KRS Chapter 311 or by an advanced practice
24 registered nurse~~[-practitioner]~~ licensed pursuant to KRS Chapter 314 and acting
25 under the physician's supervision.
- 26 (8) If payments made to community mental health centers, established pursuant to KRS
27 Chapter 210, for services provided to the mentally retarded exceed the actual cost of

1 providing the service, the balance of the payments shall be used solely for the
2 provision of other services to the mentally retarded through community mental
3 health centers.

4 (9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to
5 recipients of medical assistance under Title XIX of the Social Security Act on July
6 15, 1986, shall deny admission of a person to a bed certified for reimbursement
7 under the provisions of the Medical Assistance Program solely on the basis of the
8 person's paying status as a Medicaid recipient. No person shall be removed or
9 discharged from any facility solely because they became eligible for participation in
10 the Medical Assistance Program, unless the facility can demonstrate the resident or
11 the resident's responsible party was fully notified in writing that the resident was
12 being admitted to a bed not certified for Medicaid reimbursement. No facility may
13 decertify a bed occupied by a Medicaid recipient or may decertify a bed that is
14 occupied by a resident who has made application for medical assistance.

15 (10) Family-practice physicians practicing in geographic areas with no more than one (1)
16 primary-care physician per five thousand (5,000) population, as reported by the
17 United States Department of Health and Human Services, shall be reimbursed one
18 hundred twenty-five percent (125%) of the standard reimbursement rate for
19 physician services.

20 (11) The Cabinet for Health and Family Services shall make payments under the Medical
21 Assistance program for services which are within the lawful scope of practice of a
22 chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical
23 Assistance Program pays for the same services provided by a physician.

24 (12) The Medical Assistance Program shall use the form and guidelines established
25 pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for
26 participation in the Medical Assistance Program, including those licensed and
27 regulated under KRS Chapters 311, 312, 314, 315, and 320, any facility required to

1 be licensed pursuant to KRS Chapter 216B, and any other health care practitioner or
 2 facility as determined by the Department for Medicaid Services through an
 3 administrative regulation promulgated under KRS Chapter 13A.

- 4 (13) Dentists licensed under KRS Chapter 313 shall be excluded from the requirements
 5 of subsection (12) of this section. The Department for Medicaid Services shall
 6 develop a specific form and establish guidelines for assessing the credentials of
 7 dentists applying for participation in the Medical Assistance Program.

8 ➔Section 35. KRS 205.5636 is amended to read as follows:

- 9 (1) A Drug Management Review Advisory Board is hereby established and attached to
 10 the Cabinet for Health and Family Services for administrative purposes. The board
 11 shall consist of sixteen (16) members to be appointed by the secretary of the
 12 Cabinet for Health and Family Services and shall be constituted as follows:

13 (a) Five (5) members shall be physicians, one (1) each from the fields of family
 14 medicine, internal medicine, pediatrics, and geriatrics. The fifth physician
 15 appointed shall be from any other recognized field of medicine. Two (2) of the
 16 above indicated physicians shall be representatives of the two (2) current
 17 medical schools in the Commonwealth, the University of Kentucky and the
 18 University of Louisville Schools of Medicine;

19 (b) Five (5) members shall be pharmacists, at least one (1) of whom shall be
 20 designated as the representative of the University of Kentucky College of
 21 Pharmacy;

22 (c) Two (2) members shall be advanced practice registered nurses~~[nurse~~
 23 ~~practitioners]~~;

24 (d) One (1) member shall be an optometrist and one (1) member shall be a
 25 physician's assistant;

26 (e) One (1) member shall be a representative of the Cabinet for Health and Family
 27 Services designated to serve on an ex officio basis; and

- 1 (f) One (1) nonvoting member shall be a member of the pharmaceutical
2 manufacturing industry.
- 3 (2) (a) The physician members of the board shall be appointed from a list of three (3)
4 qualified physicians for each vacancy submitted by the Kentucky Medical
5 Association.
- 6 (b) The pharmacist members of the board shall be appointed from a list of three
7 (3) qualified pharmacists for each vacancy submitted by the Kentucky
8 Pharmacy Association.
- 9 (c) The advanced practice registered nurse~~[-practitioner]~~ members of the board
10 shall be appointed from a list of three (3) for each vacancy, submitted by the
11 Kentucky Nurses Association.
- 12 (d) The optometrist shall be appointed from a list of three (3) qualified
13 optometrists submitted by the Kentucky Optometric Association.
- 14 (e) The physician's assistant shall be appointed from a list of three (3) qualified
15 physicians assistants submitted by the Kentucky Board of Medical Licensure.
- 16 (3) The secretary may appoint one (1) nonvoting industry representative to be selected
17 from a list of three (3) members nominated from the Pharmaceutical Research and
18 Manufacturers of America. The secretary may request additional names for
19 appointments and current members may be considered for reappointment. All
20 members of the board shall be licensed and actively practicing in their respective
21 professions in the Commonwealth and shall have knowledge or expertise in at least
22 one (1) of the following areas:
- 23 (a) The clinically appropriate prescribing, utilization, and evaluation of
24 pharmaceuticals;
- 25 (b) The clinically appropriate dispensing and monitoring of pharmaceuticals;
- 26 (c) Drug utilization review, pharmacoeconomic and pharmacoepidemiological
27 evaluation and intervention, pharmacotherapeutic intervention methods in

1 disease management using treatment algorithms, critical paths, and other
 2 measures that have been well defined and validated; and

3 (d) Medical quality assurance.

4 (4) Three (3) of the initially appointed physician members, three (3) of the initially
 5 appointed pharmacist members, and one (1) of the initially appointed advanced
 6 practice registered nurses~~[nurse-practitioners]~~ shall be appointed for a term of one
 7 (1) year. The remaining initial members shall be appointed for a term of two (2)
 8 years. Subsequent appointments shall be for a term of two (2) years. Members shall
 9 serve for no more than three (3) consecutive terms. The board shall designate a
 10 chair and vice chair. A member shall serve no more than two (2) consecutive terms
 11 as chair.

12 (5) The first meeting of the board shall take place within thirty (30) days of the
 13 appointment of all the members of the board.

14 (6) The board shall meet at least quarterly, or upon the call of the chair or the
 15 commissioner. A majority of the voting members of the board shall constitute a
 16 quorum. All meetings shall be conducted in accordance with the provisions of the
 17 Open Meetings Act, KRS 61.805 to 61.850, and all balloting shall take place by roll
 18 call vote.

19 (7) Actions of the board shall require a majority vote of the members present or
 20 participating through distance communication technology. No member may vote on
 21 a matter where a conflict of interest may exist. The chair may vote on any matter
 22 before the board unless a conflict of interest exists.

23 ➔Section 36. KRS 211.395 is amended to read as follows:

24 (1) The department shall inform the operator of any public or semipublic building
 25 regulated by KRS 211.180 that has a toilet facility for its employees that a person
 26 may use that facility during normal business hours if all of the following conditions
 27 are met:

- 1 (a) The person requesting the use of the employee toilet facility provides the
- 2 public or semipublic building operator with evidence of the person's eligible
- 3 medical condition including:
 - 4 1. A copy of a statement signed by a physician, defined in KRS 311.550, a
 - 5 physician assistant, defined in KRS 311.840, or an advanced practice
 - 6 registered nurse~~[-practitioner]~~, defined in KRS 314.011, that indicates
 - 7 the person has an eligible medical condition or uses an ostomy device;
 - 8 or
 - 9 2. An identification card that is issued by a nationally recognized health
 - 10 organization and that indicates the person has an eligible medical
 - 11 condition or uses an ostomy device;
- 12 (b) Three (3) or more employees of the public or semipublic building are on the
- 13 premises at the time the person requests use of the employee toilet facility;
- 14 (c) The public or semipublic building operator does not normally make a toilet
- 15 facility available to the public;
- 16 (d) The employee toilet facility is not located in an area where providing access
- 17 would create an obvious health or safety risk to the person requesting to use
- 18 the facility or an obvious risk to the public or semipublic building; and
- 19 (e) A public toilet facility is not immediately accessible to the person.
- 20 (2) (a) The public or semipublic building operator is not civilly liable for any act or
- 21 omission in allowing a person that has an eligible medical condition or uses an
- 22 ostomy device to use an employee toilet facility that is not a public rest room
- 23 if the act or omission meets the following requirements:
 - 24 1. It is not willful or grossly negligent; and
 - 25 2. It occurs in an area of the public or semipublic building that is not
 - 26 accessible to the public.
- 27 (b) The public or semipublic building operator is not civilly liable to any

1 individual accompanying a person with an eligible medical condition or who
 2 uses an ostomy device upon the same conditions and requirements as those set
 3 forth in subsection (2)(a) of this section.

4 (3) The public or semipublic building operator is not required to make any physical
 5 changes to an employee toilet facility under KRS 211.394 and this section.

6 ➔Section 37. KRS 212.275 is amended to read as follows:

- 7 (1) The governing board for each local, district, and independent health department
 8 shall have a written policy concerning the distribution of nonscheduled legend drugs
 9 at the health department by an advanced practice registered nurse~~[practitioner]~~ or a
 10 registered nurse. In a health department, an advanced practice registered nurse~~[~~
 11 ~~practitioner]~~ or a registered nurse may distribute nonscheduled legend drugs from a
 12 list that has been prepared by the commissioner of the Department for Public
 13 Health. Nothing in this section shall be construed to limit advanced practice
 14 registered nurses~~[nurse-practitioners]~~ from dispensing nonscheduled drug samples
 15 under KRS 314.011. Each prescription drug distributed or dispensed at the health
 16 department shall be recorded in the patient record. The director of each health
 17 department shall be responsible for keeping track of the inventory of stock
 18 medications and accounting for the medications dispensed or distributed.
- 19 (2) Only a health department board having within its membership a pharmacist holding
 20 a valid license issued pursuant to KRS 315.030 shall be authorized to permit
 21 advanced practice registered nurses~~[nurse-practitioners]~~ or registered nurses to
 22 dispense nonscheduled legend drugs according to the written policy of the board. If
 23 a health department is unable to recruit a licensed pharmacist to serve on the board,
 24 the board shall document consultation with a pharmacist licensed pursuant to KRS
 25 315.030 in the public health practice of the health department.
- 26 (3) No health department shall dispense any medication or device prescribed for the
 27 purpose of causing an abortion as defined in KRS 311.720(1).

1 ➔Section 38. KRS 216.370 is amended to read as follows:

2 As used in KRS 216.375 and 216.380, "physician extender" means an advanced practice
3 registered nurse[~~practitioner~~], or a physician assistant.

4 ➔Section 39. KRS 216B.175 is amended to read as follows:

5 (1) A physician assistant, credentialed under KRS Chapter 311, when those duties and
6 responsibilities are within the scope of training received in an approved program
7 and within the scope of the supervising physician's practice, or an advanced practice
8 registered nurse[~~practitioner~~] licensed under KRS Chapter 314, may:

9 (a) Perform a history and physical examination for a patient admitted to an acute
10 care or psychiatric hospital licensed under this chapter; and

11 (b) Order and review continuation of restraints and seclusion as a health care
12 practitioner in accordance with 42 C.F.R. 482.13.

13 (2) A history and physical examination shall be performed no more than thirty (30)
14 days before or twenty-four (24) hours after a patient is admitted to an acute care or
15 psychiatric hospital licensed under this chapter.

16 (3) The history and physical examination that has been performed in compliance with
17 subsection (2) of this section is transferable to another licensed level of care within
18 the same hospital.

19 (4) The Cabinet for Health and Family Services shall promulgate administrative
20 regulations in accordance with KRS Chapter 13A to establish the content of the
21 history and physical examination required by subsection (2) of this section
22 performed in an acute or psychiatric hospital that shall be used by the licensing
23 entity.

24 ➔Section 40. KRS 216B.176 is amended to read as follows:

25 Notwithstanding any other provision of law, a not-for-profit primary care center licensed
26 under KRS Chapter 216, which is a participant in the Kentucky Patient Access and Care
27 System of the Department for Medicaid Services, may enter into a written agreement with

1 a board of education to provide a school-based health care program. The agreement shall
2 include the following provisions:

- 3 (1) The services shall include basic primary care, episodic acute care, care for chronic
4 conditions, and preventive health care for the pupils enrolled in the school;
- 5 (2) The program shall be located in a public school;
- 6 (3) The program shall operate as a satellite of a licensed primary care center under the
7 supervision of the medical director of the primary care center;
- 8 (4) When in operation as a satellite of a primary care center, the program staff shall
9 include a physician, physician assistant, or advanced practice registered nurse{
10 ~~practitioner~~} and may be staffed with additional health care professionals
11 appropriate for the services being provided; and
- 12 (5) The program may, under agreement with the school, participate in the school's
13 health education program.

14 ➔Section 41. KRS 217.015 is amended to read as follows:

15 For the purposes of KRS 217.005 to 217.215:

- 16 (1) "Advertisement" means all representations, disseminated in any manner or by any
17 means, other than by labeling, for the purpose of inducing, or which are likely to
18 induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- 19 (2) "Bread" and "enriched bread" mean only the foods commonly known and described
20 as white bread, white rolls, white buns, enriched white bread, enriched rolls, and
21 enriched white buns, as defined under the federal act. For the purposes of KRS
22 217.136 and 217.137, "bread" or "enriched bread" also means breads that may
23 include vegetables or fruit as an ingredient;
- 24 (3) "Cabinet" means the Cabinet for Health and Family Services or its designee;
- 25 (4) "Color" means but is not limited to black, white, and intermediate grays;
- 26 (5) "Color additive" means a material that:
27 (a) Is a dye, pigment, or other substance made by a process of synthesis or similar

artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or

(b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;

(6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;

(7) "Cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(b) Articles intended for use as a component of those articles, except that the term shall not include soap;

(8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(b) To affect the structure or any function of the body of man or other animals;

- 1 (9) "Dispense" means to deliver a drug or device to an ultimate user or research subject
 2 by or pursuant to the lawful order of a practitioner, including the packaging,
 3 labeling, or compounding necessary to prepare the substance for that delivery;
- 4 (10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the
 5 use of an ultimate user;
- 6 (11) "Drug" means:
- 7 (a) Articles recognized in the official United States pharmacopoeia, official
 8 homeopathic pharmacopoeia of the United States, or official national
 9 formulary, or any supplement to any of them;
- 10 (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or
 11 prevention of disease in man or other animals;
- 12 (c) Articles, other than food, intended to affect the structure or any function of the
 13 body of man or other animals; and
- 14 (d) Articles intended for use as a component of any article specified in this
 15 subsection but does not include devices or their components, parts, or
 16 accessories;
- 17 (12) "Enriched," as applied to flour, means the addition to flour of vitamins and other
 18 nutritional ingredients necessary to make it conform to the definition and standard
 19 of enriched flour as defined under the federal act;
- 20 (13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental
 21 Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;
- 22 (14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it
 23 relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments
 24 thereto;
- 25 (15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301
 26 et seq., 52 Stat. 1040 et seq., or amendments thereto;
- 27 (16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed,

evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been
 added, or which has been blended or compounded with, any fat or oil other than
 milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of
 substances used for flavoring purposes only, so that the resulting product is an
 imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or
 frozen desserts, whether or not condensed, evaporated, concentrated, frozen,
 powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed
 or unsealed. This definition does not mean or include any milk or cream from which
 no part of the milk or butter fat has been extracted, whether or not condensed,
 evaporated, concentrated, powdered, dried, or desiccated, to which has been added
 any substance rich in vitamins, nor any distinctive proprietary food compound not
 readily mistaken for milk or cream or for condensed, evaporated, concentrated,
 powdered, dried, or desiccated milk or cream, if the compound is prepared and
 designed for the feeding of infants or young children, sick or infirm persons, and
 customarily used on the order of a physician, and is packed in individual containers
 bearing a label in bold type that the contents are to be used for those purposes; nor
 shall this definition prevent the use, blending, or compounding of chocolate as a
 flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in
 containers, hermetically sealed or unsealed, to or with which has been added,
 blended or compounded no other fat or oil other than milk or butter fat;

(17) "Flour" means only the foods commonly known as flour, white flour, wheat flour,
 plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising
 wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour,
 defined under the federal act;

(18) "Food" means:

- (a) Articles used for food or drink for man or other animals;
- (b) Chewing gum; and

1 (c) Articles used for components of any such article;

2 (19) "Food additive" means any substance the intended use of which results or may be
3 reasonably expected to result, directly or indirectly, in its becoming a component or
4 otherwise affecting the characteristics of any food, including any substance intended
5 for use in producing, manufacturing, packing, processing, preparing, treating,
6 packaging, transporting, or holding food; and including any source of radiation
7 intended for any of these uses, if the substance is not generally recognized, among
8 experts qualified by scientific training and experience to evaluate its safety, as
9 having been adequately shown through scientific procedures or, in the case of a
10 substance used in a food prior to January 1, 1958, through either scientific
11 procedures or experience based on common use in food to be safe under the
12 conditions of its intended use; except that the term does not include:

13 (a) A pesticide chemical in or on a raw agricultural commodity;

14 (b) A pesticide chemical to the extent that it is intended for use or is used in the
15 production, storage, or transportation of any raw agricultural commodity;

16 (c) A color additive; or

17 (d) Any substance used in accordance with a sanction or approval granted prior to
18 the enactment of the Food Additives Amendment of 1958, pursuant to the
19 federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or
20 the Meat Inspection Act of 1907; and amendments thereto;

21 (20) "Food processing establishment" means any commercial establishment in which
22 food is manufactured, processed, or packaged for human consumption, but does not
23 include retail food establishments, home-based processors, or home-based
24 microprocessors;

25 (21) "Food service establishment" means any fixed or mobile commercial establishment
26 that engages in the preparation and serving of ready-to-eat foods in portions to the
27 consumer, including but not limited to: restaurants; coffee shops; cafeterias; short

1 order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains;
 2 taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding
 3 establishments; private, public or nonprofit organizations or institutions routinely
 4 serving food; catering kitchens; commissaries; charitable food kitchens; or similar
 5 places in which food is prepared for sale or service on the premises or elsewhere
 6 with or without charge. It does not include food vending machines, establishments
 7 serving beverages only in single service or original containers, or retail food stores
 8 which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

9 (22) "Food storage warehouse" means any establishment in which food is stored for
 10 subsequent distribution;

11 (23) "Immediate container" does not include package liners;

12 (24) "Imminent health hazard" means a significant threat or danger to health that is
 13 considered to exist when there is evidence sufficient to show that a product,
 14 practice, circumstance, or event creates a situation that requires immediate
 15 correction or cessation of operation to prevent illness or injury based on:

16 (a) The number of potential illnesses or injuries; or

17 (b) The nature, severity, and duration of the anticipated illness or injury;

18 (25) "Interference" means threatening or otherwise preventing the performance of lawful
 19 inspections or duties by agents of the cabinet during all reasonable times of
 20 operation;

21 (26) "Label" means a display of written, printed, or graphic matter upon the immediate
 22 container of any article; and a requirement made by or under authority of KRS
 23 217.005 to 217.215 that any word, statement, or other information appearing on the
 24 label shall not be considered to be complied with unless the word, statement, or
 25 other information also appears on the outside container or wrapper, if any there be,
 26 of the retail package of the article, or is easily legible through the outside container
 27 or wrapper;

- 1 (27) "Labeling" means all labels and other written, printed, or graphic matter:
- 2 (a) Upon an article or any of its containers or wrappers; or
- 3 (b) Accompanying the article;
- 4 (28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act,
- 5 as amended, and under which definition its label is required to bear the statement
- 6 "Caution: Federal law prohibits dispensing without prescription.";
- 7 (29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et
- 8 seq., 34 Stat. 1260 et seq., including any amendments thereto;
- 9 (30) "New drug" means:
- 10 (a) Any drug the composition of which is such that the drug is not generally
- 11 recognized among experts qualified by scientific training and experience to
- 12 evaluate the safety of drugs as safe for use under the conditions prescribed,
- 13 recommended, or suggested in the labeling thereof; or
- 14 (b) Any drug the composition of which is such that the drug, as a result of
- 15 investigations to determine its safety for use under prescribed conditions, has
- 16 become so recognized, but which has not, otherwise than in the investigations,
- 17 been used to a material extent or for a material time under the conditions;
- 18 (31) "Official compendium" means the official United States pharmacopoeia, official
- 19 homeopathic pharmacopoeia of the United States, official national formulary, or any
- 20 supplement to any of them;
- 21 (32) "Person" means an individual, firm, partnership, company, corporation, trustee,
- 22 association, or any public or private entity;
- 23 (33) "Pesticide chemical" means any substance that alone in chemical combination, or in
- 24 formulation with one or more other substances, is an "economic poison" within the
- 25 meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments
- 26 thereto, and that is used in the production, storage, or transportation of raw
- 27 agricultural commodities;

- 1 (34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products
 2 Inspection Act, 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any
 3 amendments thereto;
- 4 (35) "Practitioner" means medical or osteopathic physicians, dentists, chiropodists, and
 5 veterinarians who are licensed under the professional licensing laws of Kentucky to
 6 prescribe and administer drugs and devices. "Practitioner" includes optometrists
 7 when administering or prescribing pharmaceutical agents authorized in KRS
 8 320.240(12) to (14), advanced practice registered nurses~~[nurse-practitioners]~~ as
 9 authorized in KRS 314.011 and 314.042, physician assistants when administering or
 10 prescribing pharmaceutical agents as authorized in KRS 311.858, and health care
 11 professionals who are residents of and actively practicing in a state other than
 12 Kentucky and who are licensed and have prescriptive authority under the
 13 professional licensing laws of another state, unless the person's Kentucky license
 14 has been revoked, suspended, restricted, or probated, in which case the terms of the
 15 Kentucky license shall prevail;
- 16 (36) "Prescription" means a written or oral order for a drug or medicine, or combination
 17 or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or
 18 authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner,
 19 and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
 20 disease in man or other animals;
- 21 (37) "Prescription blank" means a document that conforms with KRS 217.216 and is
 22 intended for prescribing a drug to an ultimate user;
- 23 (38) "Raw agricultural commodity" means any food in its raw or natural state, including
 24 all fruits that are washed, colored, or otherwise treated in their unpeeled natural
 25 form prior to marketing;
- 26 (39) "Retail food establishment" means any food service establishment, retail food store,
 27 or a combination of both within the same establishment;

- 1 (40) "Retail food store" means any fixed or mobile establishment where food or food
 2 products, including prepackaged, labeled sandwiches or other foods to be heated in
 3 a microwave or infrared oven at the time of purchase, are offered for sale to the
 4 consumer, and intended for off-premises consumption, but does not include
 5 establishments which handle only prepackaged, snack-type, nonpotentially
 6 hazardous foods, markets that offer only fresh fruits and vegetables for sale, food
 7 service establishments, food and beverage vending machines, vending machine
 8 commissaries, or food processing establishments;
- 9 (41) "Salvage distributor" means a person who engages in the business of distributing,
 10 peddling, or otherwise trafficking in any salvaged merchandise;
- 11 (42) "Salvage processing plant" means an establishment operated by a person engaged in
 12 the business of reconditioning, labeling, relabeling, repackaging, reconditioning,
 13 sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or
 14 distributes for human or animal consumption or use any salvaged food, beverage,
 15 including beer, wine and distilled spirits, vitamins, food supplements, dentifrices,
 16 cosmetics, single-service food containers or utensils, containers and packaging
 17 materials used for foods and cosmetics, soda straws, paper napkins, or any other
 18 product of a similar nature that has been damaged or contaminated by fire, water,
 19 smoke, chemicals, transit, or by any other means;
- 20 (43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;
- 21 (44) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- 22 (45) "Temporary food service establishment" means any food service establishment
 23 which operates at a fixed location for a period of time, not to exceed fourteen (14)
 24 consecutive days;
- 25 (46) "Traffic" has the same meaning as it does in KRS 218A.010;
- 26 (47) "Ultimate user" has the same meaning as it does in KRS 218A.010;
- 27 (48) If an article is alleged to be misbranded because the labeling is misleading, or if an

1 advertisement is alleged to be false because it is misleading, in determining whether
 2 the labeling or advertisement is misleading, there shall be taken into account,
 3 among other things, not only representations made or suggested by statement, word,
 4 design, device, sound, or in any combination thereof, but also the extent to which
 5 the labeling or advertisement fails to reveal facts that are material in the light of the
 6 representations or material with respect to consequences which may result from the
 7 use of the article to which the labeling or advertisement relates under the conditions
 8 of use prescribed in the labeling or advertisement thereof or under the conditions of
 9 use as are customary or usual;

10 (49) The representation of a drug in its labeling or advertisement as an antiseptic shall be
 11 considered to be a representation that it is a germicide, except in the case of a drug
 12 purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing,
 13 ointment, dusting powder, or other use involving prolonged contact with the body;

14 (50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs,
 15 devices, or cosmetics shall be considered to include the manufacture, production,
 16 processing, packing, exposure, offer, possession, and holding of those articles for
 17 sale, the sale, dispensing, and giving of those articles, and the supplying or applying
 18 of those articles in the conduct of any food, drug, or cosmetic establishment;

19 (51) "Home" means a primary residence occupied by the processor, that contains only
 20 two (2) ranges, ovens, or double-ovens, and no more than three (3) refrigerators
 21 used for cold storage. This equipment shall have been designed for home use and
 22 not for commercial use, and shall be operated in the kitchen within the residence;

23 (52) "Formulated acid food product" means an acid food in which the addition of a small
 24 amount of low-acid food results in a finished equilibrium pH of 4.6 or below that
 25 does not significantly differ from that of the predominant acid or acid food;

26 (53) "Acidified food product" means a low-acid food to which acid or acidic food is
 27 added and which has a water activity value greater than 0.85, and a finished

- 1 equilibrium pH of 4.6 or below;
- 2 (54) "Low-acid food" means foods, other than alcoholic beverages, with a finished
3 equilibrium pH greater than 4.6, and a water activity value greater than 0.85;
- 4 (55) "Acid food" means foods that have a natural pH of 4.6 or below;
- 5 (56) "Home-based processor" means a farmer who, in the farmer's home, produces or
6 processes whole fruit and vegetables, mixed-greens, jams, jellies, sweet sorghum
7 syrup, preserves, fruit butter, bread, fruit pies, cakes, or cookies;
- 8 (57) "Home-based microprocessor" means a farmer who, in the farmer's home or
9 certified or permitted kitchen, produces or processes acid foods, formulated acid
10 food products, acidified food products, or low-acid canned foods, and who has a net
11 income of less than thirty-five thousand dollars (\$35,000) annually from the sale of
12 the product;
- 13 (58) "Certified" means any person or home-based microprocessor who:
- 14 (a) Has attended the Kentucky Cooperative Extension Service's microprocessing
15 program or pilot microprocessing program and has been identified by the
16 Kentucky Cooperative Extension Service as having satisfactorily completed
17 the prescribed course of instruction; or
- 18 (b) Has attended some other school pursuant to 21 C.F.R. sec. 114.10;
- 19 (59) "Farmer" means a person who is a resident of Kentucky and owns or rents
20 agricultural land pursuant to subsection (9) of KRS 132.010 or horticultural land
21 pursuant to subsection (10) of KRS 132.010. For the purposes of KRS 217.136 to
22 217.139, "farmer" also means any person who is a resident of Kentucky and has
23 grown the primary horticultural and agronomic ingredients used in the home-based
24 processed products which they have produced; and
- 25 (60) "Farmers market temporary food service establishment" means any temporary food
26 service establishment operated by a farmer who is a member of the market which
27 operates within the confines of a farmers market registered with the Kentucky

Department of Agriculture for the direct-to-consumer marketing of Kentucky-grown farm products from approved sources for a period of time not to exceed two (2) days per week for any consecutive six (6) months period in a calendar year.

➔Section 42. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or

(b) The patient or research subject at the direction and in the presence of the practitioner;

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and antisteroids;

(3) "Cabinet" means the Cabinet for Health and Family Services;

(4) "Child" means any person under the age of majority as specified in KRS 2.015;

(5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;

(6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and

2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the

1 stimulant, depressant, or hallucinogenic effect on the central nervous
2 system of a controlled substance in Schedule I or II; or

3 3. With respect to a particular person, which such person represents or
4 intends to have a stimulant, depressant, or hallucinogenic effect on the
5 central nervous system that is substantially similar to or greater than the
6 stimulant, depressant, or hallucinogenic effect on the central nervous
7 system of a controlled substance in Schedule I or II.

8 (b) Such term does not include:

9 1. Any substance for which there is an approved new drug application;

10 2. With respect to a particular person, any substance if an exemption is in
11 effect for investigational use for that person pursuant to federal law to
12 the extent conduct with respect to such substance is pursuant to such
13 exemption; or

14 3. Any substance to the extent not intended for human consumption before
15 the exemption described in subparagraph 2. of this paragraph takes
16 effect with respect to that substance;

17 (7) "Counterfeit substance" means a controlled substance which, or the container or
18 labeling of which, without authorization, bears the trademark, trade name, or other
19 identifying mark, imprint, number, or device, or any likeness thereof, of a
20 manufacturer, distributor, or dispenser other than the person who in fact
21 manufactured, distributed, or dispensed the substance;

22 (8) "Dispense" means to deliver a controlled substance to an ultimate user or research
23 subject by or pursuant to the lawful order of a practitioner, including the packaging,
24 labeling, or compounding necessary to prepare the substance for that delivery;

25 (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V
26 controlled substance to or for the use of an ultimate user;

27 (10) "Distribute" means to deliver other than by administering or dispensing a controlled

1 substance;

2 (11) "Drug" means:

3 (a) Substances recognized as drugs in the official United States Pharmacopoeia,
4 official Homeopathic Pharmacopoeia of the United States, or official National
5 Formulary, or any supplement to any of them;

6 (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or
7 prevention of disease in man or animals;

8 (c) Substances (other than food) intended to affect the structure or any function of
9 the body of man or animals; and

10 (d) Substances intended for use as a component of any article specified in this
11 subsection.

12 It does not include devices or their components, parts, or accessories;

13 (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal
14 prosecution only, means an in-person medical examination of the patient conducted
15 by the prescribing practitioner or other health-care professional routinely relied
16 upon in the ordinary course of his or her practice, at which time the patient is
17 physically examined and a medical history of the patient is obtained. "In-person"
18 includes telehealth examinations. This subsection shall not be applicable to hospice
19 providers licensed pursuant to KRS Chapter 216B;

20 (13) "Hazardous chemical substance" includes any chemical substance used or intended
21 for use in the illegal manufacture of a controlled substance as defined in this section
22 or the illegal manufacture of methamphetamine as defined in KRS 218A.1431,
23 which:

24 (a) Poses an explosion hazard;

25 (b) Poses a fire hazard; or

26 (c) Is poisonous or injurious if handled, swallowed, or inhaled;

27 (14) "Immediate precursor" means a substance which is the principal compound

1 commonly used or produced primarily for use, and which is an immediate chemical
2 intermediary used or likely to be used in the manufacture of a controlled substance
3 or methamphetamine, the control of which is necessary to prevent, curtail, or limit
4 manufacture;

5 (15) "Intent to manufacture" means any evidence which demonstrates a person's
6 conscious objective to manufacture a controlled substance or methamphetamine.
7 Such evidence includes but is not limited to statements and a chemical substance's
8 usage, quantity, manner of storage, or proximity to other chemical substances or
9 equipment used to manufacture a controlled substance or methamphetamine;

10 (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and
11 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical,
12 positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer"
13 means the optical or geometric isomer;

14 (17) "Manufacture," except as provided in KRS 218A.1431, means the production,
15 preparation, propagation, compounding, conversion, or processing of a controlled
16 substance, either directly or indirectly by extraction from substances of natural
17 origin or independently by means of chemical synthesis, or by a combination of
18 extraction and chemical synthesis, and includes any packaging or repackaging of the
19 substance or labeling or relabeling of its container except that this term does not
20 include activities:

21 (a) By a practitioner as an incident to his administering or dispensing of a
22 controlled substance in the course of his professional practice;

23 (b) By a practitioner, or by his authorized agent under his supervision, for the
24 purpose of, or as an incident to, research, teaching, or chemical analysis and
25 not for sale; or

26 (c) By a pharmacist as an incident to his dispensing of a controlled substance in
27 the course of his professional practice;

- 1 (18) "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the
 2 seeds thereof; the resin extracted from any part of the plant; and every compound,
 3 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin
 4 or any compound, mixture, or preparation which contains any quantity of these
 5 substances;
- 6 (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only,
 7 means an accounting of a patient's medical background, including but not limited to
 8 prior medical conditions, prescriptions, and family background;
- 9 (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only,
 10 means a lawful order of a specifically identified practitioner for a specifically
 11 identified patient for the patient's health-care needs. "Medical order" may or may
 12 not include a prescription drug order;
- 13 (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only,
 14 means a record, other than for financial or billing purposes, relating to a patient,
 15 kept by a practitioner as a result of the practitioner-patient relationship;
- 16 (22) "Methamphetamine" means any substance that contains any quantity of
 17 methamphetamine, or any of its salts, isomers, or salts of isomers;
- 18 (23) "Narcotic drug" means any of the following, whether produced directly or indirectly
 19 by extraction from substances of vegetable origin, or independently by means of
 20 chemical synthesis, or by a combination of extraction and chemical synthesis:
- 21 (a) Opium and opiate, and any salt, compound, derivative, or preparation of
 22 opium or opiate;
- 23 (b) Any salt, compound, isomer, derivative, or preparation thereof which is
 24 chemically equivalent or identical with any of the substances referred to in
 25 paragraph (a) of this subsection, but not including the isoquinoline alkaloids
 26 of opium;
- 27 (c) Opium poppy and poppy straw;

- 1 (d) Coca leaves, except coca leaves and extracts of coca leaves from which
 2 cocaine, ecgonine, and derivatives of ecgonine or their salts have been
 3 removed;
- 4 (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- 5 (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
- 6 (g) Any compound, mixture, or preparation which contains any quantity of any of
 7 the substances referred to in paragraphs (a) to (f) of this subsection;
- 8 (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining
 9 liability similar to morphine or being capable of conversion into a drug having
 10 addiction-forming or addiction-sustaining liability. It does not include, unless
 11 specifically designated as controlled under KRS 218A.030, the dextrorotatory
 12 isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does
 13 include its racemic and levorotatory forms;
- 14 (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its
 15 seeds;
- 16 (26) "Person" means individual, corporation, government or governmental subdivision
 17 or agency, business trust, estate, trust, partnership or association, or any other legal
 18 entity;
- 19 (27) "Physical injury" has the same meaning it has in KRS 500.080;
- 20 (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- 21 (29) "Pharmacist" means a natural person licensed by this state to engage in the practice
 22 of the profession of pharmacy;
- 23 (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific
 24 investigator, optometrist as authorized in KRS 320.240, advanced practice
 25 registered nurse~~[-practitioner]~~ as authorized under KRS 314.011, or other person
 26 licensed, registered, or otherwise permitted by state or federal law to acquire,
 27 distribute, dispense, conduct research with respect to, or to administer a controlled

substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered nurse~~[-practitioner]~~ authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;

(31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;

(32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced practice registered nurse~~[-practitioner]~~, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;

(34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;

(35) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a

1 nontrafficking offense shall be treated as a prior offense only when the subsequent
 2 offense is a nontrafficking offense. For the purposes of this section, a conviction
 3 voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under
 4 this chapter;

5 (36) "Sell" means to dispose of a controlled substance to another person for
 6 consideration or in furtherance of commercial distribution;

7 (37) "Serious physical injury" has the same meaning it has in KRS 500.080;

8 (38) "Telehealth" has the same meaning it has in KRS 311.550;

9 (39) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in
 10 the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic
 11 substances, derivatives, and their isomers with similar chemical structure and
 12 pharmacological activity such as the following:

- 13 1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
- 14 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
- 15 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

16 (40) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute,
 17 dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense,
 18 or sell a controlled substance;

19 (41) "Transfer" means to dispose of a controlled substance to another person without
 20 consideration and not in furtherance of commercial distribution; and

21 (42) "Ultimate user" means a person who lawfully possesses a controlled substance for
 22 his own use or for the use of a member of his household or for administering to an
 23 animal owned by him or by a member of his household.

24 ➔Section 43. KRS 218A.202 is amended to read as follows:

25 (1) The Cabinet for Health and Family Services shall establish an electronic system for
 26 monitoring Schedules II, III, IV, and V controlled substances that are dispensed
 27 within the Commonwealth by a practitioner or pharmacist or dispensed to an

1 address within the Commonwealth by a pharmacy that has obtained a license,
2 permit, or other authorization to operate from the Kentucky Board of Pharmacy.

3 (2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically
4 dedicated to the operation of the system.

5 (3) Every dispenser within the Commonwealth or any other dispenser who has obtained
6 a license, permit, or other authorization to operate from the Kentucky Board of
7 Pharmacy shall report to the Cabinet for Health and Family Services the data
8 required by this section in a timely manner as prescribed by the cabinet except that
9 reporting shall not be required for:

10 (a) A drug administered directly to a patient; or

11 (b) A drug dispensed by a practitioner at a facility licensed by the cabinet
12 provided that the quantity dispensed is limited to an amount adequate to treat
13 the patient for a maximum of forty-eight (48) hours.

14 (4) Data for each controlled substance that is dispensed shall include but not be limited
15 to the following:

16 (a) Patient identifier;

17 (b) Drug dispensed;

18 (c) Date of dispensing;

19 (d) Quantity dispensed;

20 (e) Prescriber; and

21 (f) Dispenser.

22 (5) The data shall be provided in the electronic format specified by the Cabinet for
23 Health and Family Services unless a waiver has been granted by the cabinet to an
24 individual dispenser. The cabinet shall establish acceptable error tolerance rates for
25 data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or
26 inaccurate data shall be corrected upon notification by the cabinet if the dispenser
27 exceeds these error tolerance rates.

1 (6) The Cabinet for Health and Family Services shall only disclose data to persons and
 2 entities authorized to receive that data under this section. Disclosure to any other
 3 person or entity, including disclosure in the context of a civil action where the
 4 disclosure is sought either for the purpose of discovery or for evidence, is prohibited
 5 unless specifically authorized by this section. The Cabinet for Health and Family
 6 Services shall be authorized to provide data to:

7 (a) A designated representative of a board responsible for the licensure,
 8 regulation, or discipline of practitioners, pharmacists, or other person who is
 9 authorized to prescribe, administer, or dispense controlled substances and who
 10 is involved in a bona fide specific investigation involving a designated person;

11 (b) A Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a
 12 certified or full-time peace officer of another state, or a federal peace officer
 13 whose duty is to enforce the laws of this Commonwealth, of another state, or
 14 of the United States relating to drugs and who is engaged in a bona fide
 15 specific investigation involving a designated person;

16 (c) A state-operated Medicaid program;

17 (d) A properly convened grand jury pursuant to a subpoena properly issued for the
 18 records;

19 (e) A practitioner or pharmacist who requests information and certifies that the
 20 requested information is for the purpose of providing medical or
 21 pharmaceutical treatment to a bona fide current patient;

22 (f) In addition to the purposes authorized under paragraph (a) of this subsection,
 23 the Kentucky Board of Medical Licensure, for any physician who is:

24 1. Associated in a partnership or other business entity with a physician who
 25 is already under investigation by the Board of Medical Licensure for
 26 improper prescribing practices;

27 2. In a designated geographic area for which a trend report indicates a

1 substantial likelihood that inappropriate prescribing may be occurring;
 2 or

3 3. In a designated geographic area for which a report on another physician
 4 in that area indicates a substantial likelihood that inappropriate
 5 prescribing may be occurring in that area;

6 (g) In addition to the purposes authorized under paragraph (a) of this subsection,
 7 the Kentucky Board of Nursing, for any advanced practice registered nurse{
 8 practitioner} who is:

9 1. Associated in a partnership or other business entity with a physician who
 10 is already under investigation by the Kentucky Board of Medical
 11 Licensure for improper prescribing practices;

12 2. Associated in a partnership or other business entity with an advanced
 13 practice registered nurse{~~practitioner~~} who is already under
 14 investigation by the Board of Nursing for improper prescribing
 15 practices;

16 3. In a designated geographic area for which a trend report indicates a
 17 substantial likelihood that inappropriate prescribing may be occurring;
 18 or

19 4. In a designated geographic area for which a report on a physician or
 20 another advanced practice registered nurse{~~practitioner~~} in that area
 21 indicates a substantial likelihood that inappropriate prescribing may be
 22 occurring in that area; or

23 (h) A judge or a probation or parole officer administering a diversion or probation
 24 program of a criminal defendant arising out of a violation of this chapter or of
 25 a criminal defendant who is documented by the court as a substance abuser
 26 who is eligible to participate in a court-ordered drug diversion or probation
 27 program.

- 1 (7) The Department for Medicaid Services may use any data or reports from the system
2 for the purpose of identifying Medicaid recipients whose usage of controlled
3 substances may be appropriately managed by a single outpatient pharmacy or
4 primary care physician.
- 5 (8) A person who receives data or any report of the system from the cabinet shall not
6 provide it to any other person or entity except by order of a court of competent
7 jurisdiction and only to a person or entity authorized to receive the data or the report
8 under this section, except that:
- 9 (a) A peace officer specified in subsection (6)(b) of this section who is authorized
10 to receive data or a report may share that information with other peace officers
11 specified in subsection (6)(b) of this section authorized to receive data or a
12 report if the peace officers specified in subsection (6)(b) of this section are
13 working on a bona fide specific investigation involving a designated person.
14 Both the person providing and the person receiving the data or report under
15 this paragraph shall document in writing each person to whom the data or
16 report has been given or received and the day, month, and year that the data or
17 report has been given or received. This document shall be maintained in a file
18 by each law enforcement agency engaged in the investigation; and
- 19 (b) A representative of the Department for Medicaid Services may share data or
20 reports regarding overutilization by Medicaid recipients with a board
21 designated in subsection (6)(a) of this section, or with a law enforcement
22 officer designated in subsection (6)(b) of this section; and
- 23 (c) The Department for Medicaid Services may submit the data as evidence in an
24 administrative hearing held in accordance with KRS Chapter 13B.
- 25 (9) The Cabinet for Health and Family Services, all peace officers specified in
26 subsection (6)(b) of this section, all officers of the court, and all regulatory agencies
27 and officers, in using the data for investigative or prosecution purposes, shall

1 consider the nature of the prescriber's and dispenser's practice and the condition for
2 which the patient is being treated.

3 (10) The data and any report obtained therefrom shall not be a public record, except that
4 the Department for Medicaid Services may submit the data as evidence in an
5 administrative hearing held in accordance with KRS Chapter 13B.

6 (11) Intentional failure by a dispenser to transmit data to the cabinet as required by
7 subsection (3), (4), or (5) of this section shall be a Class A misdemeanor for the first
8 offense and a Class D felony for each subsequent offense.

9 (12) Intentional disclosure of transmitted data to a person not authorized by subsection
10 (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining
11 information under this section not relating to a bona fide specific investigation, shall
12 be a Class D felony for the first offense and a Class C felony for each subsequent
13 offense.

14 (13) The Commonwealth Office of Technology, in consultation with the Cabinet for
15 Health and Family Services, shall submit an application to the United States
16 Department of Justice for a drug diversion grant to fund a pilot project to study a
17 real-time electronic monitoring system for Schedules II, III, IV, and V controlled
18 substances. The pilot project shall:

19 (a) Be conducted in two (2) rural counties that have an interactive real-time
20 electronic information system in place for monitoring patient utilization of
21 health and social services through a federally funded community access
22 program; and

23 (b) Study the use of an interactive system that includes a relational data base with
24 query capability.

25 (14) Provisions in this section that relate to data collection, disclosure, access, and
26 penalties shall apply to the pilot project authorized under subsection (13) of this
27 section.

1 (15) The Cabinet for Health and Family Services may limit the length of time that data
 2 remain in the electronic system. Any data removed from the system shall be
 3 archived and subject to retrieval within a reasonable time after a request from a
 4 person authorized to review data under this section.

5 (16) (a) The Cabinet for Health and Family Services shall work with each board
 6 responsible for the licensure, regulation, or discipline of practitioners,
 7 pharmacists, or other persons who are authorized to prescribe, administer, or
 8 dispense controlled substances for the development of a continuing education
 9 program about the purposes and uses of the electronic system for monitoring
 10 established in this section.

11 (b) The cabinet shall work with the Kentucky Bar Association for the
 12 development of a continuing education program for attorneys about the
 13 purposes and uses of the electronic system for monitoring established in this
 14 section.

15 (c) The cabinet shall work with the Justice and Public Safety Cabinet for the
 16 development of a continuing education program for law enforcement officers
 17 about the purposes and users of the electronic system for monitoring
 18 established in this section.

19 ➔Section 44. KRS 281.873 is amended to read as follows:

20 (1) As used in this section and KRS 281.874, unless the context otherwise requires:

- 21 (a) "Certificate Type 01" means a private automobile;
- 22 (b) "Certificate Type 02" means a taxicab service;
- 23 (c) "Certificate Type 03" means a bus service;
- 24 (d) "Certificate Type 04" means a nonprofit transit system;
- 25 (e) "Certificate Type 07" means a specialty carrier certified to transport
 26 nonemergency, ambulatory disoriented persons;
- 27 (f) "Certificate Type 08" means a specialty carrier, using lift-equipped vehicles in

1 compliance with the Americans with Disabilities Act, certified to transport
2 nonemergency, nonambulatory persons;

3 (g) "Level of eligibility" means the specialty transport classification a person is
4 designated based upon the written recommendation of the person's personal
5 physician, physician assistant, advanced practice registered nurse{
6 practitioner}, or qualified mental health professional that is used to establish
7 the type of specialty transport needed for the person; and

8 (h) "Qualified mental health professional" shall have the same meaning as in KRS
9 202A.011.

10 (2) Except for members of the general public, the level of eligibility shall dictate both
11 the necessity and the type of special carrier transport for a person participating in
12 the human service transportation delivery program and shall ensure the person shall
13 be transported in the appropriate vehicle designed to accommodate the person's
14 level of eligibility. The broker shall, upon request by a recipient, provide specialty
15 carrier transportation for a period up to thirty (30) days without written
16 recommendation of the recipient's personal physician, physician assistant, advanced
17 practice registered nurse{practitioner}, or qualified mental health professional. A
18 broker shall be prohibited from changing or altering a person's level of eligibility
19 and the accompanying certificate type. A broker shall report questionable specialty
20 classifications to the cabinet.

21 (3) A parent, guardian, or designee of the parent or guardian shall accompany any
22 minor under the age of thirteen (13) who is receiving human service transportation
23 delivery program services. A parent, guardian, or designee of the parent or guardian
24 may accompany a minor between the ages of thirteen (13) and seventeen (17) who
25 is receiving human service transportation delivery program services.

26 (4) An escort shall not be required for any person aged thirteen (13) or older, unless the
27 person's physician, physician assistant, advanced practice registered nurse{

1 ~~practitioner~~], or qualified mental health professional has recommended that the
 2 person be transported with an escort based upon one (1) of the following criteria:

- 3 (a) A history of a behavior that has resulted in harm to the person or to others
 4 while receiving human service transportation delivery program services;
- 5 (b) A medical history of a behavior that indicates that the person may be a danger
 6 to himself or herself or others; or
- 7 (c) Information that the person may become violent in a transportation setting
 8 from the person's support coordinator, who is providing services under 907
 9 KAR 1:145 or any other Medicaid program, and also from the person's parent
 10 or guardian.

11 (5) A requirement for an escort under subsection (4) of this section shall be removed
 12 upon the recommendation of the physician, physician assistant, advanced practice
 13 registered nurse~~[-practitioner]~~, or qualified mental health professional.

14 (6) If an escort is required under subsection (4) of this section, the transportation
 15 provider shall provide one (1) escort per vehicle to pick up each individual at his or
 16 her designated location, remain with the person during transport, and escort the
 17 person to the designated health care provider or other covered service.

18 (7) If a person receiving transportation delivery services under a Certificate Type 07 or
 19 08 is not required to have an escort under the provisions of subsection (4) of this
 20 section, but needs assistance to and from the transportation vehicle, the
 21 transportation provider shall provide that service if the following conditions exist:

- 22 (a) It would take less than five (5) minutes to accompany the person to and from
 23 the transportation vehicle; and
- 24 (b) The transportation provider can maintain visual contact with his or her vehicle
 25 if there are other persons receiving transportation delivery services remaining
 26 in the vehicle.

27 (8) Any transportation provider that leaves a vehicle to accompany a person to or from

1 the transportation vehicle shall:

2 (a) Turn off the vehicle engine and retain the key in his or her possession; or

3 (b) Enable a transmission locking device that prohibits unauthorized use of the
4 vehicle and retain the key in his or her possession.

5 (9) If a person receiving human service transportation services does not require an
6 escort under the provisions of subsection (4) of this section, but needs assistance to
7 and from the vehicle, the transportation provider shall provide one (1) escort per
8 vehicle if the conditions of paragraphs (a) and (b) of subsection (7) of this section
9 do not exist.

10 (10) If a state agency has been appointed as the guardian of a person receiving human
11 service transportation program services, the state shall ensure that the transportation
12 provider provides an escort when the person meets the criteria under subsection (4)
13 of this section.

14 (11) A parent, guardian, or designee of the parent or guardian accompanying a minor
15 shall not be charged a fare.

16 ➔Section 45. KRS 304.17-312 is amended to read as follows:

17 As used in KRS 304.17-313, 304.18-037, 304.32-280, and 304.38-210:

18 (1) "Home health agency" means a public agency or private organization, or a
19 subdivision of such an agency or organization which is licensed as a home health
20 agency by the Kentucky Health Facilities and Health Services Certificate of Need
21 and Licensure Board and is certified to participate as a home health agency under
22 Title XVIII of the Social Security Act.

23 (2) "Home health care" means the care and treatment provided by a home health agency
24 which is prescribed and supervised by a physician. The care and treatment shall
25 include but not be limited to one (1) or more of the following:

26 (a) Part-time or intermittent skilled nursing services provided by an advanced
27 practice registered nurse [~~practitioner~~], registered nurse, or licensed practical

1 nurse;

2 (b) Physical, respiratory, occupational, or speech therapy;

3 (c) Home health aide services;

4 (d) Medical appliances and equipment, drugs and medication, and laboratory
5 services, to the extent that such items and services would have been covered
6 under the policy if the covered person had been in a hospital.

7 (3) "Home health aide services" means those services provided by a home health aide
8 and supervised by a registered nurse which are directed towards the personal care of
9 the patient. Such services shall include but not be limited to the following:

10 (a) Helping the patient with bath, care of mouth, skin, and hair;

11 (b) Helping the patient to the bathroom or in using a bedpan;

12 (c) Helping the patient in and out of bed and assisting with ambulation;

13 (d) Helping the patient with prescribed exercises which the patient and home
14 health aide have been taught by appropriate professional personnel;

15 (e) Assisting with medication ordinarily self-administered that has been
16 specifically ordered by a physician;

17 (f) Performing incidental household services as are essential to the patient's
18 health care at home provided that such services would have been performed if
19 the patient was in a hospital or skilled nursing facility; and

20 (g) Reporting to the professional nurse supervisor changes in the patient's
21 condition or family situation.

22 ➔Section 46. KRS 304.17A-005 is amended to read as follows:

23 As used in this subtitle, unless the context requires otherwise:

24 (1) "Association" means an entity, other than an employer-organized association, that
25 has been organized and is maintained in good faith for purposes other than that of
26 obtaining insurance for its members and that has a constitution and bylaws;

27 (2) "At the time of enrollment" means:

- 1 (a) At the time of application for an individual, an association that actively
- 2 markets to individual members, and an employer-organized association that
- 3 actively markets to individual members; and
- 4 (b) During the time of open enrollment or during an insured's initial or special
- 5 enrollment periods for group health insurance;
- 6 (3) "Base premium rate" means, for each class of business as to a rating period, the
- 7 lowest premium rate charged or that could have been charged under the rating
- 8 system for that class of business by the insurer to the individual or small group, or
- 9 employer as defined in KRS 304.17A-0954, with similar case characteristics for
- 10 health benefit plans with the same or similar coverage;
- 11 (4) "Basic health benefit plan" means any plan offered to an individual, a small group,
- 12 or employer-organized association that limits coverage to physician, pharmacy,
- 13 home health, preventive, emergency, and inpatient and outpatient hospital services
- 14 in accordance with the requirements of this subtitle. If vision or eye services are
- 15 offered, these services may be provided by an ophthalmologist or optometrist.
- 16 Chiropractic benefits may be offered by providers licensed pursuant to KRS
- 17 Chapter 312;
- 18 (5) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-
- 19 91(d)(3);
- 20 (6) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- 21 (7) "COBRA" means any of the following:
- 22 (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric
- 23 vaccines;
- 24 (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161
- 25 et seq. other than sec. 1169); or
- 26 (c) 42 U.S.C. sec. 300bb;
- 27 (8) (a) "Creditable coverage" means, with respect to an individual, coverage of the

individual under any of the following:

1. A group health plan;
2. Health insurance coverage;
3. Part A or Part B of Title XVIII of the Social Security Act;
4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
5. Chapter 55 of Title 10, United States Code, including medical and dental care for members and certain former members of the uniformed services, and for their dependents; for purposes of Chapter 55 of Title 10, United States Code, "uniformed services" means the Armed Forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service;
6. A medical care program of the Indian Health Service or of a tribal organization;
7. A state health benefits risk pool;
8. A health plan offered under Chapter 89 of Title 5, United States Code, such as the Federal Employees Health Benefit Program;
9. A public health plan as established or maintained by a state, the United States government, a foreign country, or any political subdivision of a state, the United States government, or a foreign country that provides health coverage to individuals who are enrolled in the plan;
10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)); or
11. Title XXI of the Social Security Act, such as the State Children's Health Insurance Program.

- (b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (14) of this section;

1 (9) "Dependent" means any individual who is or may become eligible for coverage
2 under the terms of an individual or group health benefit plan because of a
3 relationship to a participant;

4 (10) "Employee benefit plan" means an employee welfare benefit plan or an employee
5 pension benefit plan or a plan which is both an employee welfare benefit plan and
6 an employee pension benefit plan as defined by ERISA;

7 (11) "Eligible individual" means an individual:

8 (a) For whom, as of the date on which the individual seeks coverage, the
9 aggregate of the periods of creditable coverage is eighteen (18) or more
10 months and whose most recent prior creditable coverage was under a group
11 health plan, governmental plan, or church plan. A period of creditable
12 coverage under this paragraph shall not be counted if, after that period, there
13 was a sixty-three (63) day period of time, excluding any waiting or affiliation
14 period, during all of which the individual was not covered under any
15 creditable coverage;

16 (b) Who is not eligible for coverage under a group health plan, Part A or Part B of
17 Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a
18 state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et
19 seq.) and does not have other health insurance coverage;

20 (c) With respect to whom the most recent coverage within the coverage period
21 described in paragraph (a) of this subsection was not terminated based on a
22 factor described in KRS 304.17A-240(2)(a), (b), and (c);

23 (d) If the individual had been offered the option of continuation coverage under a
24 COBRA continuation provision or under KRS 304.18-110, who elected the
25 coverage; and

26 (e) Who, if the individual elected the continuation coverage, has exhausted the
27 continuation coverage under the provision or program;

1 (12) "Employer-organized association" means any of the following:

- 2 (a) Any entity that was qualified by the executive director as an eligible
3 association prior to April 10, 1998, and that has actively marketed a health
4 insurance program to its members since September 8, 1996, and which is not
5 insurer-controlled;
- 6 (b) Any entity organized under KRS 247.240 to 247.370 that has actively
7 marketed health insurance to its members and that is not insurer-controlled; or
- 8 (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-
9 91(d)(3), whose members consist principally of employers, and for which the
10 entity's health insurance decisions are made by a board or committee, the
11 majority of which are representatives of employer members of the entity who
12 obtain group health insurance coverage through the entity or through a trust or
13 other mechanism established by the entity, and whose health insurance
14 decisions are reflected in written minutes or other written documentation.

15 Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no
16 employer-organized association shall be treated as an association, small group, or
17 large group under this subtitle;

18 (13) "Employer-organized association health insurance plan" means any health insurance
19 plan, policy, or contract issued to an employer-organized association, or to a trust
20 established by one (1) or more employer-organized associations, or providing
21 coverage solely for the employees, retired employees, directors and their spouses
22 and dependents of the members of one (1) or more employer-organized
23 associations;

24 (14) "Excepted benefits" means benefits under one (1) or more, or any combination
25 thereof, of the following:

- 26 (a) Coverage only for accident, including accidental death and dismemberment,
27 or disability income insurance, or any combination thereof;

- 1 (b) Coverage issued as a supplement to liability insurance;
- 2 (c) Liability insurance, including general liability insurance and automobile
- 3 liability insurance;
- 4 (d) Workers' compensation or similar insurance;
- 5 (e) Automobile medical payment insurance;
- 6 (f) Credit-only insurance;
- 7 (g) Coverage for on-site medical clinics;
- 8 (h) Other similar insurance coverage, specified in administrative regulations,
- 9 under which benefits for medical care are secondary or incidental to other
- 10 insurance benefits;
- 11 (i) Limited scope dental or vision benefits;
- 12 (j) Benefits for long-term care, nursing home care, home health care, community-
- 13 based care, or any combination thereof;
- 14 (k) Such other similar, limited benefits as are specified in administrative
- 15 regulations;
- 16 (l) Coverage only for a specified disease or illness;
- 17 (m) Hospital indemnity or other fixed indemnity insurance;
- 18 (n) Benefits offered as Medicare supplemental health insurance, as defined under
- 19 section 1882(g)(1) of the Social Security Act;
- 20 (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10,
- 21 United States Code;
- 22 (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is
- 23 supplemental to coverage under a group health plan; and
- 24 (q) Health flexible spending arrangements;
- 25 (15) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec.
- 26 1002(32);
- 27 (16) "Group health plan" means a plan, including a self-insured plan, of or contributed to

by an employer, including a self-employed person, or employee organization, to provide health care directly or otherwise to the employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship, or their families;

(17) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals under KRS 304.17A-400 to 304.17A-480;

(18) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program under KRS 304.17A-400 to 304.17A-480;

(19) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;

(20) "Guaranteed acceptance program qualified individual" means an individual who, on or before December 31, 2000:

(a) Is not an eligible individual;

(b) Is not eligible for or covered by other health benefit plan coverage or who is a spouse or a dependent of an individual who:

1. Waived coverage under KRS 304.17A-210(2); or

2. Did not elect family coverage that was available through the association or group market;

(c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);

1 (d) Has been a resident of Kentucky for at least twelve (12) months immediately
2 preceding the effective date of the policy; and

3 (e) Has not had his or her most recent coverage under any health benefit plan
4 terminated or nonrenewed because of any of the following:

5 1. The individual failed to pay premiums or contributions in accordance
6 with the terms of the plan or the insurer had not received timely
7 premium payments;

8 2. The individual performed an act or practice that constitutes fraud or
9 made an intentional misrepresentation of material fact under the terms of
10 the coverage; or

11 3. The individual engaged in intentional and abusive noncompliance with
12 health benefit plan provisions;

13 (21) "Guaranteed acceptance plan supporting insurer" means either an insurer, on or
14 before December 31, 2000, that is not a guaranteed acceptance plan participating
15 insurer or is a stop loss carrier, on or before December 31, 2000, provided that a
16 guaranteed acceptance plan supporting insurer shall not include an employer-
17 sponsored self-insured health benefit plan exempted by ERISA;

18 (22) "Health benefit plan" means any hospital or medical expense policy or certificate;
19 nonprofit hospital, medical-surgical, and health service corporation contract or
20 certificate; provider sponsored integrated health delivery network; a self-insured
21 plan or a plan provided by a multiple employer welfare arrangement, to the extent
22 permitted by ERISA; health maintenance organization contract; or any health
23 benefit plan that affects the rights of a Kentucky insured and bears a reasonable
24 relation to Kentucky, whether delivered or issued for delivery in Kentucky, and
25 does not include policies covering only accident, credit, dental, disability income,
26 fixed indemnity medical expense reimbursement policy, long-term care, Medicare
27 supplement, specified disease, vision care, coverage issued as a supplement to

1 liability insurance, insurance arising out of a workers' compensation or similar law,
 2 automobile medical-payment insurance, insurance under which benefits are payable
 3 with or without regard to fault and that is statutorily required to be contained in any
 4 liability insurance policy or equivalent self-insurance, short-term coverage, student
 5 health insurance offered by a Kentucky-licensed insurer under written contract with
 6 a university or college whose students it proposes to insure, medical expense
 7 reimbursement policies specifically designed to fill gaps in primary coverage,
 8 coinsurance, or deductibles and provided under a separate policy, certificate, or
 9 contract, or coverage supplemental to the coverage provided under Chapter 55 of
 10 Title 10, United States Code, or limited health service benefit plans;

11 (23) "Health care provider" or "provider" means any facility or service required to be
 12 licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS
 13 Chapter 315, and any of the following independent practicing practitioners:

- 14 (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
- 15 (b) Chiropractors licensed under KRS Chapter 312;
- 16 (c) Dentists licensed under KRS Chapter 313;
- 17 (d) Optometrists licensed under KRS Chapter 320;
- 18 (e) Physician assistants regulated under KRS Chapter 311;
- 19 (f) Advanced practice registered nurses~~[nurse-practitioners]~~ licensed under KRS
 20 Chapter 314; and
- 21 (g) Other health care practitioners as determined by the office by administrative
 22 regulations promulgated under KRS Chapter 13A;

23 (24) (a) "High-cost condition," pursuant to the Kentucky Guaranteed Acceptance
 24 Program, means a covered condition in an individual policy as listed in
 25 paragraph (c) of this subsection or as added by the executive director in
 26 accordance with KRS 304.17A-280, but only to the extent that the condition
 27 exceeds the numerical score or rating established pursuant to uniform

1 underwriting standards prescribed by the executive director under paragraph
 2 (b) of this subsection that account for the severity of the condition and the cost
 3 associated with treating that condition.

4 (b) The executive director by administrative regulation shall establish uniform
 5 underwriting standards and a score or rating above which a condition is
 6 considered to be high-cost by using:

- 7 1. Codes in the most recent version of the "International Classification of
 8 Diseases" that correspond to the medical conditions in paragraph (c) of
 9 this subsection and the costs for administering treatment for the
 10 conditions represented by those codes; and
- 11 2. The most recent version of the questionnaire incorporated in a national
 12 underwriting guide generally accepted in the insurance industry as
 13 designated by the executive director, the scoring scale for which shall be
 14 established by the executive director.

15 (c) The diagnosed medical conditions are: acquired immune deficiency syndrome
 16 (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver,
 17 coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia,
 18 hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes,
 19 leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis,
 20 muscular dystrophy, myasthenia gravis, myotonia, open heart surgery,
 21 Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia,
 22 stroke, syringomyelia, and Wilson's disease;

23 (25) "Index rate" means, for each class of business as to a rating period, the arithmetic
 24 average of the applicable base premium rate and the corresponding highest premium
 25 rate;

26 (26) "Individual market" means the market for the health insurance coverage offered to
 27 individuals other than in connection with a group health plan. The individual market

1 includes an association plan that is not employer related, issued to individuals on an
 2 individually underwritten basis, other than an employer-organized association or a
 3 bona fide association, that has been organized and is maintained in good faith for
 4 purposes other than obtaining insurance for its members and that has a constitution
 5 and bylaws;

6 (27) "Insurer" means any insurance company; health maintenance organization; self-
 7 insurer or multiple employer welfare arrangement not exempt from state regulation
 8 by ERISA; provider-sponsored integrated health delivery network; self-insured
 9 employer-organized association, or nonprofit hospital, medical-surgical, dental, or
 10 health service corporation authorized to transact health insurance business in
 11 Kentucky;

12 (28) "Insurer-controlled" means that the executive director has found, in an
 13 administrative hearing called specifically for that purpose, that an insurer has or had
 14 a substantial involvement in the organization or day-to-day operation of the entity
 15 for the principal purpose of creating a device, arrangement, or scheme by which the
 16 insurer segments employer groups according to their actual or anticipated health
 17 status or actual or projected health insurance premiums;

18 (29) "Kentucky Access" has the meaning provided in KRS 304.17B-001(17);

19 (30) "Large group" means:

20 (a) An employer with fifty-one (51) or more employees; or

21 (b) An affiliated group with fifty-one (51) or more eligible members;

22 (31) "Managed care" means systems or techniques generally used by third-party payors
 23 or their agents to affect access to and control payment for health care services and
 24 that integrate the financing and delivery of appropriate health care services to
 25 covered persons by arrangements with participating providers who are selected to
 26 participate on the basis of explicit standards for furnishing a comprehensive set of
 27 health care services and financial incentives for covered persons using the

1 participating providers and procedures provided for in the plan;

2 (32) "Market segment" means the portion of the market covering one (1) of the
3 following:

4 (a) Individual;

5 (b) Small group;

6 (c) Large group; or

7 (d) Association;

8 (33) "Participant" means any employee or former employee of an employer, or any
9 member or former member of an employee organization, who is or may become
10 eligible to receive a benefit of any type from an employee benefit plan which covers
11 employees of the employer or members of the organization, or whose beneficiaries
12 may be eligible to receive any benefit as established in Section 3(7) of ERISA;

13 (34) "Preventive services" means medical services for the early detection of disease that
14 are associated with substantial reduction in morbidity and mortality;

15 (35) "Provider network" means an affiliated group of varied health care providers that is
16 established to provide a continuum of health care services to individuals;

17 (36) "Provider-sponsored integrated health delivery network" means any provider-
18 sponsored integrated health delivery network created and qualified under KRS
19 304.17A-300 and KRS 304.17A-310;

20 (37) "Purchaser" means an individual, organization, employer, association, or the
21 Commonwealth that makes health benefit purchasing decisions on behalf of a group
22 of individuals;

23 (38) "Rating period" means the calendar period for which premium rates are in effect. A
24 rating period shall not be required to be a calendar year;

25 (39) "Restricted provider network" means a health benefit plan that conditions the
26 payment of benefits, in whole or in part, on the use of the providers that have
27 entered into a contractual arrangement with the insurer to provide health care

1 services to covered individuals;

2 (40) "Self-insured plan" means a group health insurance plan in which the sponsoring
3 organization assumes the financial risk of paying for covered services provided to
4 its enrollees;

5 (41) "Small employer" means, in connection with a group health plan with respect to a
6 calendar year and a plan year, an employer who employed an average of at least two
7 (2) but not more than fifty (50) employees on business days during the preceding
8 calendar year and who employs at least two (2) employees on the first day of the
9 plan year;

10 (42) "Small group" means:

11 (a) A small employer with two (2) to fifty (50) employees; or

12 (b) An affiliated group or association with two (2) to fifty (50) eligible members;

13 (43) "Standard benefit plan" means the plan identified in KRS 304.17A-250; and

14 (44) "Telehealth" has the meaning provided in KRS 311.550.

15 ➔Section 47. KRS 304.17A-575 is amended to read as follows:

16 As used in KRS 304.17A-575 to 304.17A-578, unless the context requires otherwise:

17 (1) "Applicant" means a physician licensed under KRS Chapter 311, an advanced
18 practice registered nurse[~~practitioner~~] licensed under KRS Chapter 314, a
19 psychologist licensed under KRS Chapter 319, or an optometrist licensed under
20 KRS Chapter 320 applying for credentialing;

21 (2) "Enrollee" means a person who is eligible to receive health care services under a
22 managed care plan;

23 (3) "Managed care plan" means a health benefit plan that integrates the financing and
24 delivery of appropriate health care services to enrollees by arrangements with
25 participating providers who are selected to participate on the basis of explicit
26 standards to furnish a comprehensive set of health care services and financial
27 incentives for enrollees to use the participating providers and procedures provided

1 for in the plan; and

- 2 (4) "Nonparticipating provider" means a physician licensed under KRS Chapter 311, an
3 advanced practice registered nurse~~[-practitioner]~~ licensed under KRS Chapter 314,
4 a psychologist licensed under KRS Chapter 319, or an optometrist licensed under
5 KRS Chapter 320 that has not entered into an agreement with an insurer to provide
6 health care services.

7 ➔Section 48. KRS 304.17A-578 is amended to read as follows:

- 8 (1) As used in this section, unless the context requires otherwise:

9 (a) "Material change" means a change to a contract, the occurrence and timing of
10 which is not otherwise clearly identified in the contract, that decreases the
11 health care provider's payment or compensation or changes the administrative
12 procedures in a way that may reasonably be expected to significantly increase
13 the provider's administrative expense; and

14 (b) "Participating provider" means a physician licensed under KRS Chapter 311,
15 an advanced practice registered nurse~~[-practitioner]~~ licensed under KRS
16 Chapter 314, a psychologist licensed under KRS Chapter 319, or an
17 optometrist licensed under KRS Chapter 320 that has entered into an
18 agreement with an insurer to provide health care services.

- 19 (2) If an insurer issuing a managed care plan makes a material change to an agreement
20 it has entered into with a participating provider for the provision of health care
21 services, the insurer shall provide the participating provider with at least ninety (90)
22 days' written notice of the material change. The notice shall include a description of
23 the material change and a statement that the participating provider has the option to
24 withdraw from the agreement prior to the material change becoming effective
25 pursuant to subsection (3) of this section.

- 26 (3) A participating provider who opts to withdraw following notice of a material
27 change pursuant to subsection (2) of this section shall send written notice of

1 withdrawal to the insurer no later than forty-five (45) days prior to the effective date
2 of the material change.

- 3 (4) If an insurer issuing a managed care plan makes a change to an agreement that
4 changes an existing prior authorization, precertification, notification, or referral
5 program, or changes an edit program or specific edits, the insurer shall provide
6 notice of the change to the participating provider at least fifteen (15) days prior to
7 the change.

8 ➔Section 49. KRS 311.669 is amended to read as follows:

- 9 (1) The provisions of KRS 311.665 to 311.669 shall not apply to the use of an AED by:
10 (a) Physicians, podiatrists, or osteopaths licensed under KRS Chapter 311 or
11 chiropractors licensed under KRS Chapter 312;
12 (b) Physician assistants as defined in KRS 311.550;
13 (c) Registered nurses, practical nurses, or advanced practice registered
14 nurses~~[nurse practitioners]~~ licensed under KRS Chapter 314;
15 (d) Dentists licensed under KRS Chapter 313; or
16 (e) Paramedics licensed, or first responders or emergency medical technicians
17 certified, under KRS Chapter 311A.

- 18 (2) Nothing in this section shall preclude the licensing boards referred to in subsection
19 (1) of this section from requiring continuing education or training on the use of an
20 AED.

21 ➔Section 50. KRS 311A.170 is amended to read as follows:

- 22 (1) Subject to the provisions of this section, a paramedic may perform any procedure:
23 (a) Specified in the most recent curriculum of the United States Department of
24 Transportation training course for paramedics; and
25 (b) Any additional procedure specified by the board by administrative regulation.
26 (2) When there is a change in the United States Department of Transportation
27 curriculum for paramedics, or the board approves an additional skill or procedure by

1 administrative regulation, or approves a protocol differing from the curriculum or
2 administrative regulations, no person who was not trained under that curriculum or
3 administrative regulation shall perform any activity or procedure in the new
4 curriculum, administrative regulation, or protocol unless the person has been trained
5 according to the new curriculum, administrative regulation, or protocol and
6 demonstrates competency in the new knowledge or skill. Competency in a new skill
7 shall be demonstrated through a return demonstration to a competent evaluator. If
8 the board adopts the new procedure or skill, the board shall promulgate an
9 administrative regulation specifying the new procedure, training requirements,
10 examination requirements, and a time period during which the paramedic shall
11 successfully complete the material or lose his or her license as a paramedic.

12 (3) A paramedic may draw blood samples from a criminal defendant upon the request
13 of a peace officer and the consent of the defendant, or without the consent of the
14 defendant upon receipt of a court order requiring the procedure, if the paramedic is
15 authorized to do so by his or her employer. The authorization shall be in writing and
16 may be by general written policy of the employer and the service's medical director.
17 The paramedic who drew the blood sample shall deliver the sample to the peace
18 officer or other person specified by the court in a court order and shall testify in
19 court with regard thereto upon service of a proper subpoena.

20 (4) A paramedic shall be permitted to render services only under the supervision of an
21 emergency medical services medical director.

22 (5) Any provision of this chapter other than this section relating to the requirement for
23 additional training, requirement for skill examination, or approval of standing
24 orders, protocols, or medical procedures to the contrary notwithstanding, a
25 paramedic may be employed by a hospital to work as a licensed paramedic in the
26 emergency department of the hospital subject to the following conditions:

27 (a) The hospital in collaboration with the medical staff shall provide operating

1 procedures and policies under which the paramedic shall operate consistent
2 with the paramedic's scope of practice;

3 (b) A paramedic shall provide patient care services under the orders of a
4 physician, physician assistant, advanced practice registered nurse[
5 ~~practitioner~~], or as delegated by a registered nurse;

6 (c) Subject to the provisions relating to the scope of practice of a paramedic, a
7 hospital may require a paramedic to take additional training on any subject or
8 skill which the paramedic may be required to perform in a hospital and
9 demonstrate competency in the skill or subject to a competent evaluator; and

10 (d) The paramedic does not violate the provisions of KRS 311A.175 or any other
11 statute or administrative regulation relating to a paramedic.

12 No provision of this section shall prevent a paramedic from being employed in any
13 other section of the hospital where the paramedic's job duties do not require
14 certification or licensure by the board and do not otherwise constitute the unlawful
15 practice of medicine.

16 (6) Except as provided in subsection (2) of this section, nothing in this section shall
17 prevent an employer from exercising reasonable fiscal control over the costs of
18 providing medical services to its citizens nor prevent the employer from exercising
19 any reasonable control over paramedics providing care on behalf of the licensed
20 entity.

21 ➔Section 51. KRS 311A.175 is amended to read as follows:

22 (1) No first responder shall perform any act or procedure which exceeds the scope of
23 practice of a first responder as specified in this chapter and in administrative
24 regulations promulgated by the board.

25 (2) No emergency medical technician shall perform any act or procedure which exceeds
26 the scope of practice of an emergency medical technician as specified in this chapter
27 and in administrative regulations promulgated by the board.

- 1 (3) No paramedic shall perform any act or procedure which exceeds the scope of
2 practice of a paramedic as specified in this chapter, administrative regulations
3 promulgated by the board, protocol, standing order, or other document approved by
4 the board.
- 5 (4) A first responder, emergency medical technician, or paramedic is presumed to know
6 the standards of practice for his or her level of certification or licensure.
- 7 (5) It is the legal duty of a first responder, emergency medical technician, or paramedic
8 to refuse to perform any act or procedure which is beyond his or her scope of
9 practice regardless of whether that act or procedure is ordered by a physician,
10 physician assistant, medical director, advanced practice registered nurse{
11 ~~practitioner~~}, registered nurse, or supervisor.
- 12 (6) No employer or organization for which a first responder, emergency medical
13 technician, or paramedic has volunteered shall reprimand, discipline, or dismiss a
14 first responder, emergency medical technician, or paramedic who has refused to
15 perform an act or procedure which the first responder, emergency medical
16 technician, or paramedic knows is in violation of the provisions of this section.
17 Violation of this section by an employer or by an organization for which a first
18 responder has volunteered shall be grounds for a legal action for wrongful discipline
19 or wrongful discharge, as appropriate.
- 20 (7) The provisions of this section shall not apply to an order to perform an act or
21 procedure:
- 22 (a) For which a license or certification by the board is not required and which
23 otherwise do not constitute the unlawful practice of medicine; or
- 24 (b) For which no license or certification is required and does not involve medical
25 care or treatment; or
- 26 (c) For which a license or certification issued by an agency other than the board is
27 required and the first responder, emergency medical technician, or paramedic

1 holds such a license or certification.

2 ➔Section 52. KRS 314.011 is amended to read as follows:

3 As used in this chapter, unless the context thereof requires otherwise:

- 4 (1) "Board" means Kentucky Board of Nursing;
- 5 (2) "Delegation" means directing a competent person to perform a selected nursing
6 activity or task in a selected situation under the nurse's supervision and pursuant to
7 administrative regulations promulgated by the board in accordance with the
8 provisions of KRS Chapter 13A;
- 9 (3) "Nurse" means a person who is licensed or holds the privilege to practice under the
10 provisions of this chapter as a registered nurse or as a licensed practical nurse;
- 11 (4) "Nursing process" means the investigative approach to nursing practice utilizing a
12 method of problem-solving by means of:
- 13 (a) Nursing diagnosis, a systematic investigation of a health concern, and an
14 analysis of the data collected in order to arrive at an identifiable problem; and
- 15 (b) Planning, implementation, and evaluation based on nationally accepted
16 standards of nursing practice;
- 17 (5) "Registered nurse" means one who is licensed or holds the privilege under the
18 provisions of this chapter to engage in registered nursing practice;
- 19 (6) "Registered nursing practice" means the performance of acts requiring substantial
20 specialized knowledge, judgment, and nursing skill based upon the principles of
21 psychological, biological, physical, and social sciences in the application of the
22 nursing process in:
- 23 (a) The care, counsel, and health teaching of the ill, injured, or infirm;
- 24 (b) The maintenance of health or prevention of illness of others;
- 25 (c) The administration of medication and treatment as prescribed by a physician,
26 physician assistant, dentist, or advanced practice registered nurse{
27 ~~practitioner~~} and as further authorized or limited by the board, and which are

consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
3. Intervening when emergency care is required as a result of drug therapy;
4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
6. Instructing an individual regarding medications;

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;

(7) "Advanced practice registered nurse[~~-practitioner~~]" means a certified nurse practitioner, certified~~[one who is registered and designated to engage in advanced registered nursing practice including the]~~ nurse anesthetist, certified nurse midwife, or clinical nurse specialist, who is licensed to engage in advance practice registered nursing~~[and nurse practitioner]~~ pursuant to KRS 314.042 and certified in at least one (1) population focus;

(8) "Advanced practice registered nursing[~~practitioner~~]" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an approved organized postbasic program of study and clinical experience; ~~and~~ who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced[~~nursing~~] practice registered nursing as a certified nurse practitioner, certified nurse anesthetist, certified nurse midwife, or clinical nurse specialist; and who certified in at least one (1) population focus. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced practice registered nurses[~~nurse practitioners~~] who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130, under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.

(a) Prescriptions issued by advanced practice registered nurses[~~nurse practitioners~~] for Schedule II controlled substances classified under KRS 218A.060 shall be limited to a seventy-two (72) hour supply without any refill. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced practice registered nurse[~~practitioner~~] certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS Chapter 216B or in a regional mental health-mental retardation services program as defined in KRS Chapter 210.

(b) Prescriptions issued by advanced practice registered nurses[~~nurse~~

1 ~~practitioners~~] for Schedule III controlled substances classified under KRS
 2 218A.080 shall be limited to a thirty (30) day supply without any refill.
 3 Prescriptions issued by advanced practice registered ~~nurses~~~~nurse~~
 4 ~~practitioners~~] for Schedules IV and V controlled substances classified under
 5 KRS 218A.100 and 218A.120 shall be limited to the original prescription and
 6 refills not to exceed a six (6) month supply.

- 7 (c) Limitations for specific controlled substances which are identified as having
 8 the greatest potential for abuse or diversion, based on the best available
 9 scientific and law enforcement evidence, shall be established in an
 10 administrative regulation promulgated by the Kentucky Board of Nursing. The
 11 regulation shall be based on recommendations from the Controlled Substances
 12 Formulary Development Committee, which is hereby created. The committee
 13 shall be composed of two (2) advanced practice registered ~~nurses~~~~nurse~~
 14 ~~practitioners~~] appointed by the Kentucky Board of Nursing, one (1) of whom
 15 shall be designated as a committee co-chair; two (2) physicians appointed by
 16 the Kentucky Board of Medical Licensure, one (1) of whom shall be
 17 designated as a committee co-chair; and one (1) pharmacist appointed by the
 18 Kentucky Board of Pharmacy. The initial regulation shall be promulgated on
 19 or before August 15, 2006, and shall be reviewed at least annually thereafter
 20 by the committee.

21 Nothing in this chapter shall be construed as requiring an advanced practice
 22 registered nurse~~—practitioner~~] designated by the board as a certified nurse
 23 anesthetist to obtain prescriptive authority pursuant to this chapter or any other
 24 provision of law in order to deliver anesthesia care. The performance of these
 25 additional acts shall be consistent with the certifying organization or agencies'
 26 scopes and standards of practice recognized by the board by administrative
 27 regulation;

- 1 (9) "Licensed practical nurse" means one who is licensed or holds the privilege under
 2 the provisions of this chapter to engage in licensed practical nursing practice;
- 3 (10) "Licensed practical nursing practice" means the performance of acts requiring
 4 knowledge and skill such as are taught or acquired in approved schools for practical
 5 nursing in:
- 6 (a) The observing and caring for the ill, injured, or infirm under the direction of a
 7 registered nurse, a licensed physician, or dentist;
 - 8 (b) The giving of counsel and applying procedures to safeguard life and health, as
 9 defined and authorized by the board;
 - 10 (c) The administration of medication or treatment as authorized by a physician,
 11 physician assistant, dentist, or advanced practice registered nurse{
 12 practitioner} and as further authorized or limited by the board which is
 13 consistent with the National Federation of Licensed Practical Nurses or with
 14 Standards of Practice established by nationally accepted organizations of
 15 licensed practical nurses;
 - 16 (d) Teaching, supervising, and delegating except as limited by the board; and
 - 17 (e) The performance of other nursing acts which are authorized or limited by the
 18 board and which are consistent with the National Federation of Practical
 19 Nurses' Standards of Practice or with Standards of Practice established by
 20 nationally accepted organizations of licensed practical nurses;
- 21 (11) "School of nursing" means a nursing education program preparing persons for
 22 licensure as a registered nurse or a practical nurse;
- 23 (12) "Continuing education" means offerings beyond the basic nursing program that
 24 present specific content planned and evaluated to meet competency based
 25 behavioral objectives which develop new skills and upgrade knowledge;
- 26 (13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed
 27 nursing personnel for compensation under supervision of a nurse;

- 1 (14) "Sexual assault nurse examiner" means a registered nurse who has completed the
 2 required education and clinical experience and maintains a current credential from
 3 the board as provided under KRS 314.142 to conduct forensic examinations of
 4 victims of sexual offenses under the medical protocol issued by the Office of the
 5 Kentucky State Medical Examiner pursuant to KRS 216B.400(4);
- 6 (15) "Competency" means the application of knowledge and skills in the utilization of
 7 critical thinking, effective communication, interventions, and caring behaviors
 8 consistent with the nurse's practice role within the context of the public's health,
 9 safety, and welfare;
- 10 (16) "Credential" means a current license, registration, certificate, or other similar
 11 authorization that is issued by the board;
- 12 (17) "Dispense" means:
- 13 (a) To receive and distribute noncontrolled legend drug samples from
 14 pharmaceutical manufacturers to patients at no charge to the patient or any
 15 other party; or
- 16 (b) To distribute noncontrolled legend drugs from a local, district, and
 17 independent health department, subject to the direction of the appropriate
 18 governing board of the individual health department;
- 19 (18) "Dialysis care" means a process by which dissolved substances are removed from a
 20 patient's body by diffusion, osmosis, and convection from one (1) fluid
 21 compartment to another across a semipermeable membrane;
- 22 (19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a
 23 physician and who provides dialysis care in a licensed renal dialysis facility under
 24 the direct, on-site supervision of a registered nurse or a physician;[and]
- 25 (20) "Clinical internship" means a supervised nursing practice experience which
 26 involves any component of direct patient care;
- 27 **(21) "Population focus" means the section of the population within which the**

advanced practice registered nurse has targeted to practice. The categories of population foci are;

- (a) Family or individual across the lifespan;
- (b) Adult health and gerontology;
- (c) Neonatology;
- (d) Pediatrics;
- (e) Women's health and gender-related health; and
- (f) Psychiatric mental health; and

(22) "Conviction" means but is not limited to:

- (a) An unvacated adjudication of guilt;
 - (b) Pleading no contest or nolo contendere or entering an Alford plea; or
 - (c) Entering a guilty plea pursuant to a pretrial diversion order;
- Regardless of whether the penalty is rebated, suspended, or probated.

➔Section 53. KRS 314.042 is amended to read as follows:

- (1) An applicant for licensure~~[registration and designation]~~ to practice as an advanced practice registered nurse~~[practitioner]~~ shall file with the board a written application for licensure~~[registration and designation]~~ and submit evidence, verified by oath, that the applicant has completed an approved organized postbasic program of study and clinical experience~~[acceptable to the board]~~; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally established organization or agency recognized by the board to certify registered nurses for advanced~~[nursing]~~ practice registered nursing; and is able to understandably speak and write the English language and to read the English language with comprehension.
- (2) The board may issue a license~~[registration]~~ to practice advanced practice registered nursing to an applicant who holds a current active registered nurse license issued by the board or holds the privilege to practice as a registered nurse in this state and meets the qualifications of subsection (1) of this section. An advanced practice

1 registered nurse~~[practitioner]~~ shall be:

2 (a) Designated by the board as a certified nurse anesthetist, certified nurse
3 midwife, certified nurse practitioner, or clinical nurse specialist; and

4 (b) Certified in a least one (1) population focus.

5 (3) The applicant for licensure~~[registration and designation]~~ or renewal thereof to
6 practice as an advanced practice registered nurse~~[practitioner]~~ shall pay a fee to the
7 board as set forth in regulation by the board.

8 (4) An advanced practice registered nurse~~[practitioner]~~ shall maintain a current active
9 registered nurse license issued by the board or hold the privilege to practice as a
10 registered nurse in this state and maintain current certification by the appropriate
11 national organization or agency recognized by the board.

12 (5) Any person who holds a license~~[registration and designation]~~ to practice as an
13 advanced practice registered nurse~~[practitioner]~~ in this state shall have the right to
14 use the title "advanced practice registered nurse~~[practitioner]~~" and the abbreviation
15 "APRN~~[ARNP]~~." No other person shall assume the title or use the abbreviation or
16 any other words, letters, signs, or figures to indicate that the person using the same
17 is an advanced practice registered nurse ~~[practitioner]~~. No person shall practice as
18 an advanced practice registered nurse~~[practitioner]~~ unless licensed~~[registered]~~
19 under this section.

20 (6) Any person heretofore licensed~~[registered]~~ as an advanced practice registered
21 nurse~~[practitioner]~~ under the provisions of this chapter who has allowed the
22 licensed~~[registration]~~ to lapse may be reinstated on payment of current fee and by
23 meeting the provisions of this chapter and regulations promulgated by the board
24 pursuant to the provisions of KRS Chapter 13A.

25 (7) The board may authorize a person to practice as an advanced practice registered
26 nurse~~[practitioner]~~ temporarily and pursuant to applicable regulations promulgated
27 by the board pursuant to the provisions of KRS Chapter 13A if the person is

1 awaiting the results of the national certifying examination for the first time or is
 2 awaiting licensure by endorsement. A person awaiting the results of the national
 3 certifying examination shall use the title "APRN~~[ARNP]~~ Applicant" or
 4 "APRN~~[ARNP]~~ App."

5 (8) Before an advanced practice registered nurse~~[-practitioner]~~ engages in the
 6 prescribing or dispensing of nonscheduled legend drugs as authorized by KRS
 7 314.011(8), the advanced practice registered nurse~~[-practitioner]~~ shall enter into a
 8 written "Collaborative Agreement for the Advanced Practice Registered
 9 Nurse's~~[Nurse-Practitioner's]~~ Prescriptive Authority for Nonscheduled Legend
 10 Drugs" (CAPA-NS) with a physician that defines the scope of the prescriptive
 11 authority for nonscheduled legend drugs.

12 (9) Before an advanced practice registered nurse~~[-practitioner]~~ engages in the
 13 prescribing of Schedules II through V controlled substances as authorized by KRS
 14 314.011(8), the advanced practice registered nurse~~[-practitioner]~~ shall enter into a
 15 written "Collaborative Agreement for the Advanced Practice Registered
 16 Nurse's~~[Nurse-Practitioner's]~~ Prescriptive Authority for Controlled Substances"
 17 (CAPA-CS) with a physician that defines the scope of the prescriptive authority for
 18 controlled substances.

19 (a) The advanced practice registered nurse~~[-practitioner]~~ shall notify the
 20 Kentucky Board of Nursing of the existence of the CAPA-CS and the name of
 21 the collaborating physician and shall, upon request, furnish to the board or its
 22 staff a copy of the completed CAPA-CS. The Kentucky Board of Nursing
 23 shall notify the Kentucky Board of Medical Licensure that a CAPA-CS exists
 24 and furnish the collaborating physician's name.

25 (b) The CAPA-CS shall be in writing and signed by both the advanced practice
 26 registered nurse~~[-practitioner]~~ and the collaborating physician. A copy of the
 27 completed collaborative agreement shall be available at each site where the

- 1 advanced practice registered nurse~~[-practitioner]~~ is providing patient care.
- 2 (c) The CAPA-CS shall describe the arrangement for collaboration and
3 communication between the advanced practice registered nurse~~[-practitioner]~~
4 and the collaborating physician regarding the prescribing of controlled
5 substances by the advanced practice registered nurse~~[-practitioner]~~.
- 6 (d) The advanced practice registered nurse~~[-practitioner]~~ who is prescribing
7 controlled substances and the collaborating physician shall be qualified in the
8 same or a similar specialty.
- 9 (e) The CAPA-CS is not intended to be a substitute for the exercise of
10 professional judgment by the advanced practice registered nurse~~[-practitioner]~~
11 or by the collaborating physician.
- 12 (f) Before engaging in the prescribing of controlled substances, the advanced
13 practice registered nurse~~[-practitioner]~~ shall:
- 14 1. Have been licensed~~[-registered]~~ to practice as an advanced practice
15 registered nurse~~[-practitioner]~~ for one (1) year with the Kentucky Board
16 of Nursing; or
 - 17 2. Be nationally certified as an advanced practice registered nurse~~[-~~
18 ~~practitioner]~~ and be registered, certified, or licensed in good standing as
19 an advanced practice registered nurse~~[-practitioner]~~ in another state for
20 one (1) year prior to applying for licensure by endorsement in Kentucky.
- 21 (g) Prior to prescribing controlled substances, the advanced practice registered
22 nurse~~[-practitioner]~~ shall obtain a Controlled Substance Registration
23 Certificate through the U.S. Drug Enforcement Agency.
- 24 (h) The CAPA-CS shall be reviewed and signed by both the advanced practice
25 registered nurse~~[-practitioner]~~ and the collaborating physician and may be
26 rescinded by either party upon written notice via registered mail to the other
27 party, the Kentucky Board of Nursing, and the Kentucky Board of Medical

1 Licensure.

2 (i) The CAPA-CS shall state the limits on controlled substances which may be
3 prescribed by the advanced practice registered nurse~~[-practitioner]~~, as agreed
4 to by the advanced practice registered nurse~~[-practitioner]~~ and the
5 collaborating physician. The limits so imposed may be more stringent than
6 either the schedule limits on controlled substances established in KRS
7 314.011(8) or the limits imposed in regulations promulgated by the Kentucky
8 Board of Nursing thereunder.

9 (10) Nothing in this chapter shall be construed as requiring an advanced practice
10 registered nurse~~[-practitioner]~~ designated by the board as a certified nurse
11 anesthetist to enter into a collaborative agreement with a physician, pursuant to this
12 chapter or any other provision of law, in order to deliver anesthesia care.

13 ➔Section 54. KRS 314.031 is amended to read as follows:

14 (1) It shall be unlawful for any person to call or hold herself or himself out as or use the
15 title of nurse or to practice or offer to practice as a nurse unless licensed or
16 privileged under the provisions of this chapter.

17 (2) It shall be unlawful for any person to operate or to offer to operate or to represent or
18 advertise the operation of a school of nursing unless the school of nursing has been
19 approved under the provisions of this chapter.

20 (3) It shall be unlawful for any person knowingly to employ a nurse unless the nurse is
21 licensed or privileged under the provisions of this chapter.

22 (4) It shall be unlawful for any nurse, employer of nurses, or any person having
23 knowledge of facts to refrain from reporting to the board a nurse who:

24 (a) Has been convicted of any felony or a misdemeanor involving drugs, alcohol,
25 fraud, deceit, falsification of records, a breach of trust, physical harm or
26 endangerment to others, or dishonesty under the laws of any state or of the
27 United States; or

- 1 (b) Is suspected of fraud or deceit in procuring or attempting to procure a license,
- 2 credential, or privilege to practice nursing; or
- 3 (c) Is suspected of negligently or willfully acting in a manner inconsistent with
- 4 the practice of nursing; or
- 5 (d) Is suspected of being unfit or incompetent to practice nursing by reason of
- 6 negligence or other causes including, but not limited to, being unable to
- 7 practice nursing with reasonable skill or safety; or
- 8 (e) Is suspected of violating any provisions of this chapter; or
- 9 (f) Has a license, privilege, or credential to practice as a nurse denied, limited,
- 10 suspended, probated, revoked, or otherwise disciplined in another jurisdiction
- 11 on grounds sufficient to cause a license, privilege, or credential to be denied,
- 12 limited, suspended, probated, revoked, or otherwise disciplined in this
- 13 Commonwealth; or
- 14 (g) Is practicing nursing without a current active license, privilege, or valid
- 15 temporary work permit issued by the board; or
- 16 (h) Is suspected of misusing or misappropriating any drugs placed in the custody
- 17 of the nurse for administration, or for use of others;
- 18 (i) Is suspected of falsifying or in a negligent manner making incorrect entries or
- 19 failing to make essential entries on essential records; ~~or~~
- 20 (j) Is suspected of abusing controlled substances, prescription medications, illegal
- 21 substances, or alcohol; or
- 22 **(k) Is suspected of violating the confidentiality of information or knowledge**
- 23 **concerning any patient, except as authorized or required by law.**

24 ➔Section 55. KRS 314.043 is amended to read as follows:

- 25 (1) Registered nurses holding current permits to practice nurse midwifery issued by the
- 26 Cabinet for Human Resources on or before January 1, 1986, may continue to be
- 27 issued permits to practice nurse midwifery by the Kentucky Board of Nursing for so

1 long as they remain active registered nurses.

2 (2) Permits to practice nurse midwifery shall not be issued to any person not holding a
3 Cabinet for Human Resources permit on January 1, 1986.

4 (3) Persons permitted to practice nurse midwifery under this section shall not use the
5 title "advanced practice registered nurse~~[practitioner]~~" or the abbreviation
6 "APRN~~[ARNP]~~" or any other words, letters, signs or figures to indicate that the
7 person using the same is an advanced practice registered nurse~~[practitioner]~~, unless
8 that person also holds licensure~~[registration and designation]~~ as an advanced
9 practice registered nurse~~[practitioner]~~ under KRS 314.042.

10 ➔Section 56. KRS 314.071 is amended to read as follows:

11 (1) The license of every person issued under the provisions of this chapter shall be
12 renewed for a period of time as determined by the board by administrative
13 regulation promulgated pursuant to KRS Chapter 13A, except as hereinafter
14 provided. The applicant shall fill in the application form and return it to the board
15 with the renewal fee prescribed by the board in a regulation before the expiration
16 date of his current license.~~[Upon receipt of the application and fee the board shall~~
17 ~~verify the accuracy of the application to determine whether the licensee has met all~~
18 ~~the requirements as set forth in this chapter and in regulations promulgated by the~~
19 ~~board, and if so, shall issue to the applicant a license to practice for the ensuing~~
20 ~~licensure period. Such license shall render the holder a legal practitioner of nursing~~
21 ~~for the period stated on it.]~~ The board shall prescribe by regulation the beginning
22 and ending of the licensure period.

23 (2) Any licensee who allows his license to lapse by failing to renew the license as
24 provided above may be reinstated by the board on payment of current fee for
25 original licensure and by meeting the regulations of the board.

26 (3) Notice that the license must be renewed shall be sent to the~~[last known]~~ address of
27 record pursuant to KRS 314.107 of each licensee~~[at least six (6) weeks]~~ before the

1 expiration date of the license.

2 (4) Any person practicing nursing during the time the license has lapsed shall be
3 considered an illegal practitioner and shall be subject to the penalties provided for
4 violations of the provisions of this chapter.

5 ➔Section 57. KRS 314.073 is amended to read as follows:

6 (1) Except for the first licensure renewal following the issuance of an original license
7 by the board, as a prerequisite for license renewal, all individuals licensed under
8 provisions of this chapter shall be required to document continuing competency
9 during the immediate past licensure period as prescribed in regulations promulgated
10 by the board.

11 (2) The continuing competency requirement shall be documented and reported as set
12 forth by the board in administrative regulations promulgated in accordance with
13 KRS Chapter 13A.

14 (3) The board shall approve providers of continuing education. The approval may
15 include recognition of providers approved by national organizations and state
16 boards of nursing with comparable standards. Standards for these approvals shall be
17 set by the board in administrative regulations promulgated in accordance with the
18 provisions of KRS Chapter 13A.

19 (4) The board shall work cooperatively with professional nursing organizations,
20 approved nursing schools, and other potential sources of continuing education
21 programs to assure that adequate continuing education offerings are available
22 statewide. The board may enter into contractual agreements to implement the
23 provisions of this section.

24 (5) The board shall be responsible for notifying applicants for licensure and licensees
25 applying for license renewal, of continuing competency requirements.

26 (6) The continuing competency requirements shall include the completion of the course
27 described in KRS 214.610(1) at least one (1) time every ten (10) years, but the

1 board may in its discretion require completion of the course more frequently.

2 (7) In order to offset administrative costs incurred in the implementation of the
3 mandatory continuing competency requirements, the board may charge reasonable
4 fees as established by regulation in accordance with the provisions of KRS Chapter
5 13A.

6 (8) The continuing competency requirements shall include at least five (5) contact
7 hours in pharmacology continuing education for any person registered as an
8 advanced practice registered nurse~~[-practitioner]~~.

9 ➔Section 58. KRS 314.091 is amended to read as follows:

10 (1) The board shall have power to reprimand, deny, limit, revoke, probate, or suspend
11 any license or credential to practice nursing issued by the board or applied for in
12 accordance with this chapter or the privilege to practice as a nurse recognized by the
13 board in accordance with this chapter, or to otherwise discipline a licensee,
14 credential holder, privilege holder, or applicant, or to deny admission to the
15 licensure examination, or to require evidence of evaluation and therapy upon proof
16 that the person:

17 (a) Is guilty of fraud or deceit in procuring or attempting to procure a license,
18 credential, or privilege to practice nursing;

19 (b) Has been convicted of any felony, or a misdemeanor involving drugs, alcohol,
20 fraud, deceit, falsification of records, a breach of trust, physical harm or
21 endangerment to others, or dishonesty, under the laws of any state or of the
22 United States. The record of conviction or a copy thereof, certified by the
23 clerk of the court or by the judge who presided over the conviction, shall be
24 conclusive evidence~~[-For the purposes of this section, "conviction" means but~~
25 ~~is not limited to pleading no contest, entering an Alford plea, entering a guilty~~
26 ~~plea pursuant to a pretrial diversion order, or entry of a court order suspending~~
27 ~~the imposition of a criminal penalty to a crime];~~

- 1 (c) Has been convicted of a misdemeanor offense under KRS Chapter 510
- 2 involving a patient, or a felony offense under KRS Chapter 510,
- 3 530.064(1)(a), or 531.310, or has been found by the board to have had sexual
- 4 contact as defined in KRS 510.010(7) with a patient while the patient was
- 5 under the care of the nurse;
- 6 (d) Has negligently or willfully acted in a manner inconsistent with the practice of
- 7 nursing;
- 8 (e) Is unfit or incompetent to practice nursing by reason of negligence or other
- 9 causes, including but not limited to, being unable to practice nursing with
- 10 reasonable skill or safety;
- 11 (f) Abuses use of controlled substances, prescription medications, illegal
- 12 substances, or alcohol;
- 13 (g) Has misused or misappropriated any drugs placed in the custody of the nurse
- 14 for administration, or for use of others;
- 15 (h) Has falsified or in a negligent manner made incorrect entries or failed to make
- 16 essential entries on essential records;
- 17 (i) Has a license, privilege, or credential to practice as a nurse denied, limited,
- 18 suspended, probated, revoked, or otherwise disciplined in another jurisdiction
- 19 on grounds sufficient to cause a license or privilege to be denied, limited,
- 20 suspended, probated, revoked, or otherwise disciplined in this
- 21 Commonwealth, including action by another jurisdiction for failure to repay a
- 22 student loan;
- 23 (j) Has violated any of the provisions of this chapter;
- 24 (k) Has violated any lawful order or directive previously entered by the board;
- 25 (l) Has violated any administrative regulation promulgated by the board; ~~{or}~~
- 26 (m) Has been listed on the nurse aide abuse registry with a substantiated finding of
- 27 abuse, neglect, or misappropriation of property; or

1 **(n) Has violated the confidentiality of information or knowledge concerning**
 2 **any patient, except as authorized or required by law.**

3 (2) All hearings shall be conducted in accordance with KRS Chapter 13B. A suspended
 4 or revoked license, privilege, or credential may be reinstated at the discretion of the
 5 board, and in accordance with regulations promulgated by the board.

6 (3) The executive director may issue subpoenas to compel the attendance of witnesses
 7 and the production of documents in the conduct of an investigation. The subpoenas
 8 may be enforced by the Circuit Court as for contempt. Any order or subpoena of the
 9 court requiring the attendance and testimony of witnesses and the production of
 10 documentary evidence may be enforced and shall be valid anywhere in this state.

11 (4) At all hearings on request of the board the Attorney General of this state or one (1)
 12 of the assistant attorneys general designated by the Attorney General shall appear
 13 and represent the board.

14 (5) A final order of the board shall be by majority vote thereof.

15 (6) Any person adversely affected by any final order of the board may obtain a review
 16 thereof by filing a written petition for review with the Circuit Court of the county in
 17 which the board's offices are located in accordance with KRS Chapter 13B.

18 (7) If the board substantiates that sexual contact occurred between a nurse and a patient
 19 while the patient was under the care of or in a professional relationship with the
 20 nurse, the nurse's license, privilege, or credential may be revoked or suspended with
 21 mandatory treatment of the nurse as prescribed by the board. The board may require
 22 the nurse to pay a specified amount for mental health services for the patient which
 23 are needed as a result of the sexual contact.

24 ➔Section 59. KRS 314.103 is amended to read as follows:

25 The board may require a criminal background investigation of an applicant, **nurse, or**
 26 **dialysis technician**~~[for endorsement]~~ by means of a fingerprint check by the Department
 27 of Kentucky State Police and the Federal Bureau of Investigation.

➔Section 60. KRS 314.108 is amended to read as follows:

(1) Any person licensed by the board shall, within thirty (30) days of the entry of a final order, notify the board in writing if any professional or business license that is issued to the person by any agency of the Commonwealth or any other jurisdiction is subject to~~[surrendered or terminated under threat of]~~ disciplinary action~~[or is refused, suspended, or revoked, or if renewal of continuance is denied]~~. The person shall submit a certified copy of the order and a letter of explanation.

(2) An applicant for licensure shall notify the board in writing if any professional or business license that was issued to the person by any agency of the Commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action, or is refused, suspended, or revoked, or if renewal of continuance is denied. The person shall submit a certified copy of the order and a letter of explanation with his or her application.

➔Section 61. KRS 314.109 is amended to read as follows:

Any person under the jurisdiction of the board shall, within ninety (90) days of entry of an order or~~[the final]~~ judgment, notify the board in writing of any misdemeanor or felony criminal conviction, except traffic-related misdemeanors other than operating a motor vehicle under the influence of drugs or alcohol, in this or any other jurisdiction. The person shall submit a certified copy of the order and a letter of explanation.

➔Section 62. KRS 314.111 is amended to read as follows:

(1) An institution desiring to conduct a school of nursing shall apply to the board and submit evidence that it is prepared to carry out the minimum approved basic curriculum in nursing and that it is prepared to fulfill other requirements of standards which are established by KRS 314.011 to 314.161 and KRS 314.991 and the administrative regulations promulgated by the board. No person shall operate a nursing education program or school of nursing without complying with the provisions of this section.

1 (2) A survey of the institution and its proposed education program shall be made by the
 2 executive director or an authorized employee of the board who shall submit a
 3 written report of the survey to the board. If in the opinion of the board the
 4 requirements for an approved nursing education program or school of nursing are
 5 met it shall approve the school.

6 **(3) The board shall, by administrative regulations promulgated pursuant to KRS**
 7 **Chapter 13A, set standards for the establishment and outcomes of nursing**
 8 **education programs that prepare advanced practice registered nurses, including**
 9 **clinical learning experiences, and shall approve such programs that meet the**
 10 **standards.**

11 ~~(4)(3)~~ If the board determines that any approved school of nursing is not maintaining
 12 the standards required by the statutes and the administrative regulations of the
 13 board, notice thereof in writing specifying their deficiencies shall be immediately
 14 given to the school. A school which fails to correct these conditions to the
 15 satisfaction of the board~~[within a reasonable time]~~ shall be **subject to**~~[discontinued~~
 16 ~~after]~~ an administrative hearing **to determine whether the school shall be closed.**
 17 The hearing shall be conducted in accordance with KRS Chapter 13B.

18 ➔Section 63. KRS 314.121 is amended to read as follows:

19 (1) The Governor shall appoint a Board of Nursing consisting of sixteen (16) members;
 20 (a) Nine (9) members shall be registered nurses licensed to practice in the
 21 Commonwealth;
 22 (b) Three (3) members shall be practical nurses licensed to practice in the
 23 Commonwealth;
 24 (c) One (1) member shall be a nurse service administrator who is a registered
 25 nurse licensed to practice in the Commonwealth;
 26 (d) One (1) member shall be engaged in practical nurse education who is a
 27 registered nurse licensed to practice in the Commonwealth; and

- 1 (e) Two (2) members shall be citizens at large, who are not associated with or
2 financially interested in the practice or business regulated.
- 3 (2) Each appointment shall be for a term of four (4) years expiring on June 30 of the
4 fourth year. The cycle for appointments and expiration of terms shall be as follows:
- 5 (a) The first year of the four (4) year cycle, the terms for three (3) registered
6 nurses and one (1) licensed practical nurse shall expire;
- 7 (b) The second year of the four (4) year cycle, the terms for three (3) registered
8 nurses and one (1) citizen at large shall expire;
- 9 (c) The third year of the four (4) year cycle, the terms for two (2) registered
10 nurses, one (1) licensed practical nurse, and the one (1) member engaged in
11 practical nurse education who is a registered nurse shall expire; and
- 12 (d) The fourth year of the four (4) year cycle, the terms for two (2) registered
13 nurses, one (1) licensed practical nurse, and one (1) citizen at large shall
14 expire.
- 15 (3) (a) By March 1, the Kentucky Nurses Association shall submit to the Governor a
16 list of members qualified for appointment as R.N. members, in number not
17 less than twice the number of appointments to be made, from which list the
18 Governor shall make each appointment or appointments necessary by July 1.
- 19 (b) By March 1, the Kentucky State Association of Licensed Practical Nurses
20 shall submit to the Governor a list of names qualified for appointment as
21 L.P.N. members, in number not less than twice the number of appointments to
22 be made, from which list the Governor shall make each appointment or
23 appointments as necessary by July 1.
- 24 (c) By March 1 of the year in which the nurse service administrator's term shall
25 expire, the Kentucky Organization of Nurse Executives, an affiliate of the
26 Kentucky Hospital Association, shall submit to the Governor two (2) names of
27 qualified individuals for appointment as the nurse service administrator from

- 1 which list the Governor shall make an appointment as necessary by July 1.
- 2 (d) By March 1, the Kentucky Association of Nonprofit Homes and Services for
3 the Aging, Inc., shall submit to the Governor two (2) names of qualified
4 individuals for appointments as its R.N. representative to the board, from
5 which the Governor shall make an appointment by July 1.
- 6 (e) By March 1 of the year in which the Kentucky Association of Health Care
7 Facilities representative's term shall expire, the Kentucky Association of
8 Health Care Facilities shall submit to the Governor two (2) names of qualified
9 individuals for appointment as its R.N. representative to the board, from
10 which list the Governor shall make an appointment as necessary by July 1.
- 11 (f) Initially, the Governor shall appoint one (1) member to serve as the registered
12 nurse who is engaged in practical nurse education to serve the term remaining
13 according to the cycle specified in subsection (2) of this section. By August 1,
14 1996, the Kentucky State Association of Licensed Practical Nurses shall
15 submit to the Governor two (2) names of qualified individuals for the
16 appointment, from which list the Governor shall make the appointment by
17 September 1, 1996. Thereafter, by March 1 of the year in which the practical
18 nurse educator's term expires, the Kentucky State Association of Licensed
19 Practical Nurses shall submit to the Governor two (2) names of qualified
20 individuals for the appointment, from which list the Governor shall make the
21 appointment by July 1.
- 22 (g) The Governor shall appoint two (2) members who shall be citizens at large,
23 who are not associated with or financially interested in the practice or business
24 regulated. The Governor shall make the appointments by July 1 of the year in
25 which the citizen members' terms expire.
- 26 (4) A vacancy on the board shall be filled by the Governor as provided for under
27 subsection (1) of this section.

- 1 (5) The Governor may remove any member from the board for neglect of duty,
2 incompetence, or unprofessional or dishonorable conduct.
- 3 (6) Each R.N. member of the board shall be a citizen of the United States, a resident of
4 Kentucky, a graduate of an approved school of nursing, and a registered nurse in
5 this state. All shall have had at least five (5) years of experience in nursing, three (3)
6 of which shall immediately precede such appointment. Five (5) members shall be
7 engaged in nursing practice; three (3) shall be engaged in nursing education; one (1)
8 shall be engaged in advanced practice registered nursing~~[-practice]~~; and one (1)
9 shall be in nursing administration.
- 10 (7) Each L.P.N. member of the board shall be a citizen of the United States, a resident
11 of Kentucky, a graduate of an approved school of practical nursing or its equivalent,
12 licensed as a licensed practical nurse in this state, have at least five (5) years of
13 experience in nursing, three (3) of which shall immediately precede this
14 appointment, and be currently engaged in nursing practice.
- 15 ➔Section 64. KRS 314.171 is amended to read as follows:
- 16 (1) The board may establish an alternative to discipline program to promote the early
17 identification, intervention, treatment, and rehabilitation of nurses who may be
18 impaired by reason of alcohol or drug abuse. In addition, the board may include in
19 this program nurses or applicants who have practice competency deficits.
- 20 (2) The board may enter into a contractual agreement with a nonprofit corporation,
21 nursing professional organization, or similar organization for the purpose of
22 creating, supporting, and maintaining an alternative to discipline program.
- 23 (3) The board may promulgate administrative regulations pursuant to KRS Chapter
24 13A to effectuate and implement an alternative to discipline program formed
25 pursuant to this section.
- 26 (4) Beginning January 1, 1997, the board shall collect an assessment of five dollars (\$5)
27 to be added to each nurse licensure renewal application fee payable to the board,

1 proceeds from which shall be expended on the operation of an alternative to
2 discipline program formed pursuant to this section.

3 (5) Any administrator, staff member, consultant, agent, volunteer, or employee of the
4 alternative to discipline program acting within the scope of their duties and without
5 actual malice, and all other persons who furnish information to the alternative to
6 discipline program in good faith and without actual malice, shall not be liable for
7 any claim or damages as a result of any statement, decision, opinion, investigation,
8 or action taken by the alternative to discipline program or staff.

9 (6) All~~[-information,]~~ interviews, reports, statements, memoranda, or other documents
10 furnished to or produced by the alternative to discipline program, all
11 communications to or from the alternative to discipline program, and all
12 proceedings, findings, and conclusions of the alternative to discipline program
13 including those relating to intervention, treatment, or rehabilitation, which in any
14 way pertain or refer to a nurse who is or may be impaired, shall be privileged and
15 confidential.

16 (7) All records and proceedings of the alternative to discipline program which pertain
17 or refer to a nurse who is or may be impaired shall be privileged and confidential,
18 shall be used by the alternative to discipline program, board members, or board staff
19 only in the exercise of the proper function of the alternative to discipline program,
20 shall not be considered public records, and shall not be subject to court subpoena,
21 discovery, or introduction as evidence in any civil, criminal, or administrative
22 proceedings except as described in subsection (8) of this section.

23 (8) The alternative to discipline program may only disclose information relative to an
24 impaired nurse if:

25 (a) It is essential to disclose the information to persons or organizations needing
26 the information in order to address the intervention, treatment, or
27 rehabilitation needs of the impaired nurse;

- 1 (b) The release is authorized in writing by the impaired nurse; or
- 2 (c) The alternative to discipline program is required to make a report to the board
- 3 pursuant to KRS 314.031(4).

- 4 (9) The alternative to discipline program may order an examination or evaluation under
- 5 KRS 314.085 at any time following initial contact by a potential applicant to the
- 6 program.

7 **(10) Notwithstanding any other provision of law to the contrary, the board shall**
 8 **disclose the fact of a nurse's participation in the alternative to discipline program**
 9 **to the public. No information other than the nurse's participation in the**
 10 **alternative to discipline program shall be disclosed.**

11 ➔ Section 65. KRS 314.193 is amended to read as follows:

- 12 (1) There is hereby created an Advanced **Practice** Registered Nurse~~[-Practitioner]~~ Council
- 13 to be made up of nine (9) members, including one (1) member who shall be from
- 14 the Board of Nursing, one (1) member from the Board of Medical Licensure, one
- 15 (1) member from the Board of Pharmacy, and six (6) advanced **practice** registered
- 16 **nurses**~~[nurse-practitioners]~~ who shall be determined as follows:

- 17 (a) Three (3) advanced **practice** registered nurse~~[-practitioner]~~ members shall
- 18 include one (1) **certified** nurse anesthetist, one (1) **certified** nurse midwife,
- 19 and one (1) **certified** nurse practitioner who shall be nominated from members
- 20 chosen by their respective nursing specialty groups or organizations and
- 21 recommended to the Board of Nursing for appointment; and

- 22 (b) Three (3) advanced **practice** registered nurse~~[-practitioner]~~ members, at least
- 23 one (1) of whom shall be a designated clinical nurse specialist, shall be
- 24 nominated by the Kentucky Nurses Association, and recommended to the
- 25 Board of Nursing for appointment.

- 26 (2) The council shall meet annually or as the members designate and shall seek all
- 27 available information from concerned nursing groups. The council shall have the

1 duty of recommending standards in the performance of any acts requiring additional
 2 education which is recognized~~[jointly]~~ by the nursing profession~~[and medical~~
 3 ~~professions]~~. The Board of Nursing may authorize the performance of additional
 4 acts by its regulations, after seeking all available information from the groups to be
 5 regulated. The regulations shall not be inconsistent with statutory law and shall be
 6 promulgated pursuant to the provisions of KRS Chapter 13A.

- 7 (3) The terms for the council shall be for four (4) years.~~[No member shall serve for~~
 8 ~~more than two (2) consecutive terms.]~~

9 ➔Section 66. KRS 314.195 is amended to read as follows:

10 An advanced practice registered nurse~~[practitioner]~~ shall be considered a practitioner for
 11 purposes of KRS Chapters 217 and 218A and shall have the authority granted to a
 12 practitioner pursuant to those chapters subject to the conditions set forth in KRS 314.042.

13 ➔Section 67. KRS 315.040 is amended to read as follows:

- 14 (1) Nothing in this chapter shall be construed to prevent, restrict, or otherwise interfere
 15 with the sale of nonprescription drugs in their original packages by any retailer. No
 16 rule or regulation shall be adopted by the Board of Pharmacy under this chapter
 17 which shall require the sale of nonprescription drugs by a licensed pharmacist or
 18 under the supervision of a licensed pharmacist.

- 19 (2) Nothing in this chapter shall interfere with the professional activities of any licensed
 20 practicing physician, or prevent the physician from keeping any drug or medicine
 21 that he or she may need in his or her practice, from compounding the physician's
 22 own medications, or from dispensing or supplying to patients any article that seems
 23 proper to the physician.

- 24 (3) Nothing in this chapter shall be construed to interfere with the activities of a
 25 midlevel health care practitioner as provided in KRS 216.925.

- 26 (4) Nothing in this chapter pertaining to the use of collaborative care agreements shall
 27 apply in any hospital or other health facility operated by a hospital without the

1 express written permission of the hospital's governing body. Collaborative care
2 agreements may be restricted by the policies and procedures of the facility.

3 (5) Nothing in this chapter shall interfere with the activities of a physician assistant as
4 authorized in KRS Chapter 311.

5 (6) Nothing in this chapter shall interfere with the activities of an advanced practice
6 registered nurse~~[-practitioner]~~ as authorized in KRS Chapter 314.

7 ➔Section 68. KRS 18A.197 is amended to read as follows:

8 (1) The Commonwealth of Kentucky sick leave sharing program is created. An
9 employee who has accrued a sick leave balance of more than seventy-five (75)
10 hours may request that the appointing authority of the agency for which the
11 employee works makes available for transfer a specified amount of his or her sick
12 leave balance to another named employee authorized to receive leave under
13 subsection (2) of this section. The employee may not request a transfer of an
14 amount of leave that would result in reducing his or her sick leave balance to less
15 than seventy-five (75) hours.

16 (2) An appointing authority, with the approval of the secretary of personnel, may permit
17 an employee of the agency to receive leave under this section if:

18 (a) The employee or a member of his or her immediate family suffers from a
19 medically certified illness, injury, impairment, or physical or mental condition
20 which has caused, or is likely to cause, the employee to go on leave for at least
21 ten (10) consecutive working days;

22 (b) The employee's need for absence and use of leave are certified by a licensed
23 practicing physician or advanced practice registered nurse;

24 (c) The employee has exhausted his or her accumulated sick leave, annual leave,
25 and compensatory leave balances; and

26 (d) The employee has complied with administrative regulations governing the use
27 of sick leave.

- 1 (3) The appointing authority, with the approval of the secretary of personnel, shall
2 determine the amount of leave, if any, which an employee within his or her agency
3 may receive under subsection (2) of this section. Transfers of leave shall not exceed
4 the amount requested by the recipient.
- 5 (4) Leave may be transferred from an employee of one (1) agency to an employee
6 within the same agency. With the approval of the secretary of personnel and of the
7 appointing authorities of both agencies, leave may be transferred from an employee
8 of one (1) agency to an employee of another state agency. The Personnel Cabinet
9 shall maintain records of leave transferred between employees and the utilization of
10 transferred leave.
- 11 (5) While an employee is on leave transferred under this section, he or she shall be
12 deemed a state employee and shall receive the same treatment with respect to salary,
13 wages and employee benefits.
- 14 (6) All salary and wage payments made to an employee while on leave transferred
15 under this section shall be made by the agency employing the person receiving the
16 leave.
- 17 (7) Any leave transferred under this section which remains unused shall be returned to
18 the employees who transferred the leave when the appointing authority finds that
19 the leave is no longer needed and will not be needed at a future time in connection
20 with the illness or injury for which the leave was transferred to an employee in his
21 agency.
- 22 (8) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to
23 intimidate, threaten, or coerce any other employee for the purpose of interfering
24 with the employee's right to voluntarily contribute leave when authorized under this
25 section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall
26 include, without being limited to, the promise to confer or the conferring of any
27 benefit or effecting or threatening to effect any reprisal.

- 1 (9) The secretary of the Personnel Cabinet shall promulgate procedural administrative
2 regulations to implement the provisions of this section.

3 ➔Section 69. KRS 158.035 is amended to read as follows:

4 Except as provided in KRS 214.036, no child shall be eligible to enroll as a student in any
5 public or private elementary or secondary school without first presenting a certificate
6 from a medical physician,~~[or]~~ osteopathic physician, or advanced practice registered
7 nurse licensed in any state. The certificate shall state that the child has been immunized
8 against diphtheria, tetanus, poliomyelitis, rubeola, and rubella in accordance with the
9 provisions of this section and KRS 214.010, 214.020, 214.032 to 214.036, and 214.990
10 and the administrative regulations of the secretary for health and family services. The
11 governing body of private and public schools shall enforce the provisions of this section.

12 ➔Section 70. KRS 163.525 is amended to read as follows:

13 (1) As used in this section and KRS 163.527:

14 (a) "Specialized telecommunications equipment" means devices such as, but not
15 limited to, telecommunications devices for the deaf, amplified phones, loud
16 ringers, visual alert signalers, tactile signalers, captioned telephones, and
17 appropriate wireless devices; and

18 (b) "Telecommunications Access Program" means the program to furnish
19 specialized telecommunications equipment to deaf, hard-of-hearing, and
20 speech-impaired persons in order that they may have equal access to
21 telecommunications services through the telecommunications relay service
22 established pursuant to KRS 278.548. The program shall include maintenance
23 and repair of the equipment.

24 (2) (a) On or before July 1, 1995, the Commission on the Deaf and Hard of Hearing
25 shall establish a program to distribute specialized telecommunications
26 equipment to any deaf, hard-of-hearing, or speech-impaired person qualified
27 to receive the equipment pursuant to subsection (3) of this section.

- 1 (b) Prior to the establishment of the Telecommunications Access Program, the
 2 Commission on the Deaf and Hard of Hearing shall initiate an investigation,
 3 conduct public hearings, and solicit the advice and counsel of deaf, hard-of-
 4 hearing, and speech-impaired persons and the organizations serving them.
- 5 (c) The Commission on the Deaf and Hard of Hearing may contract with any
 6 person, public, or private organization to provide part or all components of the
 7 Telecommunications Access Program, if applicable statutory procurement
 8 provisions are followed. The Commission on the Deaf and Hard of Hearing
 9 may use assistance from public agencies of the state or federal government or
 10 from private organizations to accomplish the purposes of this section. The
 11 Kentucky Commission on the Deaf and Hard of Hearing shall enter into
 12 memoranda of agreement with the Public Service Commission for
 13 coordination and oversight of funding and operations to meet the objectives of
 14 this section and KRS 278.5499. The Commission on the Deaf and Hard of
 15 Hearing may also enter into memoranda of agreement with other state
 16 agencies to accomplish the purposes of this section.
- 17 (3) Factors to determine a person's eligibility to receive specialized telecommunications
 18 equipment shall include, but not be limited to:
- 19 (a) Kentucky residency;
- 20 (b) Attainment of at least five (5) years of age; and
- 21 (c) Certification as deaf, hard of hearing, or severely speech-impaired by a
 22 licensed physician, audiologist, speech pathologist, advanced practice
 23 registered nurse, or by any other method recognized by the Commission on
 24 the Deaf and Hard of Hearing. Certification implies that the individual cannot
 25 use the telephone for communication without adaptive equipment.
- 26 (4) No more than one (1) piece of specialized telecommunications equipment shall be
 27 provided to a person qualified to receive the equipment pursuant to subsection (3)

1 of this section. However, a malfunctioning piece of specialized telecommunications
 2 equipment originally distributed by the program may be returned for repair or
 3 replacement. The Commission on the Deaf and Hard of Hearing may prioritize
 4 distribution of the specialized telecommunications equipment on the basis of need.

- 5 (5) The Commission on the Deaf and Hard of Hearing shall establish procedures for
 6 application and distribution of specialized telecommunications equipment by the
 7 promulgation of administrative regulations in accordance with provisions of KRS
 8 Chapter 13A.

9 ➔Section 71. KRS 199.8982 is amended to read as follows:

- 10 (1) (a) The cabinet shall establish a family child-care home certification program
 11 which shall be administered by the department. A family child-care provider
 12 shall apply for certification of the provider's home if the provider is caring for
 13 four (4) to six (6) children unrelated to the provider. A family child-care
 14 provider caring for three (3) or fewer children may apply for certification of
 15 the provider's home at the discretion of the provider. Applicants for
 16 certification shall not have been found by the cabinet or a court to have abused
 17 or neglected a child, and shall meet the following minimum requirements:

- 18 1. Submit two (2) written character references;
- 19 2. Provide a written statement from a physician or advanced practice
 20 registered nurse that the applicant is in good health;
- 21 3. Submit to a criminal record check in accordance with KRS 17.165. The
 22 application shall be denied if the applicant has been convicted of a
 23 violent crime or sex crime as defined in KRS 17.165;
- 24 4. Provide smoke detectors, a telephone, an adequate water supply,
 25 sufficient lighting and space, and a safe environment in the residence in
 26 which care is provided;
- 27 5. Provide a copy of the results of a tuberculosis risk assessment and the

- 1 results of any appropriate follow-up with skin testing or chest X-ray for
2 applicants who are determined to be at risk for developing tuberculosis
3 in accordance with the recommendations of the Centers for Disease
4 Control and Prevention within thirty (30) days of the date of application
5 for certification; and
- 6 6. Demonstrate completion of a total of at least six (6) hours of training in
7 the following areas within three (3) months of application for
8 certification:
- 9 a. Basic health, safety, and sanitation;
10 b. Recognizing and reporting child abuse; and
11 c. Developmentally appropriate child-care practice.
- 12 (b) Initial applications for certification shall be made to the department and shall
13 be accompanied by a ten dollar (\$10) certification fee. The department shall
14 issue a certificate of operation upon inspecting the family child-care home and
15 determining the provider's compliance with the provisions of this section. The
16 inspection shall be unannounced. A certificate of operation issued pursuant to
17 this section shall not be transferable and shall be renewed every two (2) years
18 for a fee of ten dollars (\$10).
- 19 (c) A certified family child-care provider shall display the certificate of operation
20 in a prominent place within the residence in which care is provided. The
21 cabinet shall provide the certified family child-care provider with written
22 information explaining the requirements for a family day-care provider and
23 instructions on the method of reporting violations of the requirements which
24 the provider shall distribute to parents.
- 25 (d) Upon request of any person, the cabinet shall provide information regarding
26 the denial, revocation, suspension, or violation of any type of day-care license
27 of the family child-care provider. Identifying information regarding children

1 and their families shall remain confidential.

2 (e) The cabinet shall provide, upon request, public information regarding the
3 inspections of and the plans of correction for the family child-care home
4 within the past year. All information distributed by the cabinet under this
5 paragraph shall include a statement indicating that the reports as provided
6 under this paragraph from the past five (5) years are available from the family
7 child-care home upon the parent's, custodian's, guardian's, or other interested
8 person's request.

9 (f) The cabinet shall promulgate administrative regulations in accordance with
10 KRS Chapter 13A which establish standards for the issuance, monitoring,
11 release of information under this section and KRS 199.896 and 199.898,
12 renewal, denial, revocation, and suspension of a certificate of operation for a
13 family child-care home and establish criteria for the denial of certification if
14 criminal records indicate convictions that may impact the safety and security
15 of children in care. A denial, suspension, or revocation of a certificate may be
16 appealed, and upon appeal an administrative hearing shall be conducted in
17 accordance with KRS Chapter 13B. If the cabinet has probable cause to
18 believe that there is an immediate threat to the public health, safety, or
19 welfare, the cabinet may take emergency action to suspend a certificate
20 pursuant to KRS 13B.125. The cabinet shall promulgate administrative
21 regulations to impose minimum staff-to-child ratios. The cabinet may
22 promulgate administrative regulations relating to other requirements necessary
23 to ensure minimum safety in family child-care homes. The cabinet shall
24 develop and provide an "easy-to-read" guide containing the following
25 information to a family child-care provider seeking certification of his home:

- 26 1. Certification requirements and procedures;
- 27 2. Information about available child-care training; and

1 3. Child-care food sponsoring organizations.

2 (2) Family child-care providers shall annually demonstrate to the department
3 completion of at least six (6) hours of training in child development.

4 (3) The cabinet shall, either through the development of or approval of, make available
5 a model training curriculum and training materials, including video instructional
6 materials, to cover the areas specified in subsection (1)(a)6. of this section. The
7 cabinet shall develop or approve the model training curriculum and training
8 materials to cover the areas specified in subsection (1)(a)6. of this section.

9 ➔Section 72. KRS 214.010 is amended to read as follows:

10 Every physician and advanced practice registered nurse shall report all diseases
11 designated by administrative regulation of the Cabinet for Health and Family Services as
12 reportable which are under his or her special treatment to the local board of health of his
13 or her county, and every head of a family shall report any of the designated~~[said]~~
14 diseases, when known by him or her to exist in his or her family, to the local board or to
15 some member thereof in accordance with the administrative regulations of the Cabinet
16 for Health and Family Services.

17 ➔Section 73. KRS 214.181 is amended to read as follows:

18 (1) The General Assembly finds that the use of tests designed to reveal a condition
19 indicative of human immunodeficiency virus (HIV) infection can be a valuable tool
20 in protecting the public health. The General Assembly finds that knowledge of HIV
21 status is increasingly important for all persons since treatment using antiretroviral
22 medications can slow disease progression, prolong and improve the lives of HIV-
23 positive individuals, and reduce the likelihood of perinatal mother-to-child
24 transmission. Many members of the public are deterred from seeking testing
25 because they misunderstand the nature of the test or fear that test results will be
26 disclosed without their consent. The General Assembly finds that the public health
27 will be served by facilitating informed, voluntary, and confidential use of tests

1 designed to detect human immunodeficiency virus infection.

2 (2) A person who has signed a general consent form for the performance of medical
3 procedures and tests is not required to also sign or be presented with a specific
4 consent form relating to medical procedures or tests to determine human
5 immunodeficiency virus infection, antibodies to human immunodeficiency virus, or
6 infection with any other causative agent of acquired immunodeficiency syndrome
7 that will be performed on the person during the time in which the general consent
8 form is in effect. However, a general consent form shall instruct the patient that, as
9 part of the medical procedures or tests, the patient may be tested for human
10 immunodeficiency virus infection, hepatitis, or any other blood-borne infectious
11 disease if a doctor or advanced practice registered nurse orders the test for
12 diagnostic purposes. Except as otherwise provided in subsection (5)(d) of this
13 section, the results of a test or procedure to determine human immunodeficiency
14 virus infection, antibodies to human immunodeficiency virus, or infection with any
15 probable causative agent of acquired immunodeficiency syndrome performed under
16 the authorization of a general consent form shall be used only for diagnostic or
17 other purposes directly related to medical treatment.

18 (3) In any emergency situation where informed consent of the patient cannot reasonably
19 be obtained before providing health-care services, there is no requirement that a
20 health-care provider obtain a previous informed consent.

21 (4) The physician or advanced practice registered nurse who orders the test pursuant
22 to subsections (1) and (2) of this section, or the attending physician, shall be
23 responsible for informing the patient of the results of the test if the test results are
24 positive for human immunodeficiency virus infection. If the tests are positive, the
25 physician or advanced practice registered nurse shall also be responsible for either:

26 (a) Providing information and counseling to the patient concerning his infection
27 or diagnosis and the known medical implications of such status or condition;

1 or

2 (b) Referring the patient to another appropriate professional or health-care facility
3 for the information and counseling.

4 (5) (a) No person in this state shall perform a test designed to identify the human
5 immunodeficiency virus, or its antigen or antibody, without first obtaining the
6 informed consent of the person upon whom the test is being performed, except
7 as specified in subsections (2) and (3) of this section.

8 (b) No test result shall be determined as positive, and no positive test result shall
9 be revealed to any person, without corroborating or confirmatory tests being
10 conducted.

11 (c) 1. Nothing in this subsection shall be construed as prohibiting the
12 disclosure to the patient of preliminary positive results from HIV rapid
13 tests if results are delivered with an explanation of the following:

- 14 a. The meaning of a reactive rapid test;
- 15 b. The importance of confirmatory testing; and
- 16 c. The importance of taking precautions to reduce the risk of
17 infecting others while awaiting the results of confirmatory testing.

18 2. In special cases where immediate actions may be necessary to protect a
19 patient, such as potential perinatal transmission or incidents warranting
20 post-exposure prophylaxis, a preliminary positive result from a HIV
21 rapid test may be disclosed to the patient and used as a basis to
22 recommend options for prophylaxis or treatment.

23 (d) No person who has obtained or has knowledge of a test result pursuant to this
24 section shall disclose or be compelled to disclose the identity of any person
25 upon whom a test is performed, or the results of the test in a manner which
26 permits identification of the subject of the test, except to the following
27 persons:

1. The subject of the test or the subject's legally authorized representative;
2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
6. A health facility or health-care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;
7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
9. A person allowed access by a court order that is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for

1 human immunodeficiency virus only if the person seeking the test
2 results has demonstrated a compelling need for the test results
3 which cannot be accommodated by other means. In assessing
4 compelling need, the court shall weigh the need for testing and
5 disclosure against the privacy interest of the test subject and the
6 public interest which may be disserved by disclosure which deters
7 blood, organ, and semen donation and future human-
8 immunodeficiency-virus-related testing or which may lead to
9 discrimination. This paragraph shall not apply to blood bank donor
10 records;

- 11 b. Pleadings pertaining to disclosure of test results shall substitute a
12 pseudonym for the true name of the subject of the test. The
13 disclosure to the parties of the subject's true name shall be
14 communicated confidentially, in documents not filed with the
15 court;
- 16 c. Before granting any order, the court shall provide the individual
17 whose test result is in question with notice and a reasonable
18 opportunity to participate in the proceedings if he or she is not
19 already a party;
- 20 d. Court proceedings as to disclosure of test results shall be
21 conducted in camera, unless the subject of the test agrees to a
22 hearing in open court or unless the court determines that a public
23 hearing is necessary to the public interest and the proper
24 administration of justice;
- 25 e. Upon the issuance of an order to disclose test results, the court
26 shall impose appropriate safeguards against unauthorized
27 disclosure, which shall specify the persons who may have access to

1 the information, the purposes for which the information shall be
2 used, and appropriate prohibitions on future disclosure.

3 No person to whom the results of a test have been disclosed shall disclose the
4 test results to another person except as authorized by this subsection. When
5 disclosure is made pursuant to this subsection, it shall be accompanied by a
6 statement in writing that includes the following or substantially similar
7 language: "This information has been disclosed to you from records whose
8 confidentiality is protected by state law. State law prohibits you from making
9 any further disclosure of such information without the specific written consent
10 of the person to whom such information pertains, or as otherwise permitted by
11 state law. A general authorization for the release of medical or other
12 information is NOT sufficient for this purpose." An oral disclosure shall be
13 accompanied by oral notice and followed by a written notice within ten (10)
14 days.

15 (6) (a) The Cabinet for Health and Family Services shall establish a network of
16 voluntary human immunodeficiency virus testing programs in every county in
17 the state. These programs shall be conducted in each public health department
18 established under the provisions of KRS Chapter 212. Additional programs
19 may be contracted to other private providers to the extent that finances permit
20 and local circumstances dictate.

21 (b) Each public health department shall have the ability to provide counseling and
22 testing for the human immunodeficiency virus to each patient who receives
23 services and shall offer the testing on a voluntary basis to each patient who
24 requests the test.

25 (c) Each public health department shall provide a program of counseling and
26 testing for human immunodeficiency virus infection, on an anonymous or
27 confidential basis, dependent on the patient's desire. If the testing is performed

1 on an anonymous basis, only the statistical information relating to a positive
2 test for human immunodeficiency virus infection shall be reported to the
3 cabinet. If the testing is performed on a confidential basis, the name and other
4 information specified under KRS 214.645 shall be reported to the cabinet. The
5 cabinet shall continue to provide for anonymous testing and counseling.

6 (d) The result of a serologic test conducted under the auspices of the cabinet shall
7 not be used to determine if a person may be insured for disability, health, or
8 life insurance or to screen or determine suitability for, or to discharge a person
9 from, employment. Any person who violates the provisions of this subsection
10 shall be guilty of a Class A misdemeanor.

11 (7) No public health department and no other private or public facility shall be
12 established for the primary purpose of conducting a testing program for acquired
13 immunodeficiency syndrome, acquired immunodeficiency syndrome related
14 complex, or human immunodeficiency virus status without first registering with the
15 cabinet, complying with all other applicable provisions of state law, and meeting the
16 following requirements:

17 (a) The program shall be directed by a person who has completed an educational
18 course approved by the cabinet in the counseling of persons with acquired
19 immunodeficiency syndrome, acquired immunodeficiency syndrome related
20 complex, or human immunodeficiency virus infection;

21 (b) The program shall have all medical care supervised by a physician licensed
22 under the provisions of KRS Chapter 311;

23 (c) The program shall have all laboratory procedures performed in a laboratory
24 licensed under the provisions of KRS Chapter 333;

25 (d) Informed consent shall be required prior to testing. Informed consent shall be
26 preceded by an explanation of the test, including its purpose, potential uses,
27 and limitations and the meaning of its results;

- 1 (e) The program, unless it is a blood donor center, shall provide pretest
2 counseling on the meaning of a test for human immunodeficiency virus,
3 including medical indications for the test; the possibility of false positive or
4 false negative results; the potential need for confirmatory testing; the potential
5 social, medical, and economic consequences of a positive test result; and the
6 need to eliminate high-risk behavior;
- 7 (f) The program shall provide supplemental corroborative testing on all positive
8 test results before the results of any positive test is provided to the patient;
- 9 (g) The program shall provide post-test counseling, in person, on the meaning of
10 the test results; the possible need for additional testing; the social, medical,
11 and economic consequences of a positive test result; and the need to eliminate
12 behavior which might spread the disease to others;
- 13 (h) Each person providing post-test counseling to a patient with a positive test
14 result shall receive specialized training, to be specified by regulation of the
15 cabinet, about the special needs of persons with positive results, including
16 recognition of possible suicidal behavior, and shall refer the patient for further
17 health and social services as appropriate;
- 18 (i) When services are provided for a charge during pretest counseling, testing,
19 supplemental testing, and post-test counseling, the program shall provide a
20 complete list of all charges to the patient and the cabinet; and
- 21 (j) Nothing in this subsection shall be construed to require a facility licensed
22 under KRS Chapter 333 or a person licensed under the provisions of KRS
23 Chapters 311, 312, or 313 to register with the cabinet if he or she does not
24 advertise or hold himself or herself out to the public as conducting testing
25 programs for human immunodeficiency virus infection or specializing in such
26 testing.
- 27 (8) Any violation of this section by a licensed health-care provider shall be a ground for

disciplinary action contained in the professional's respective licensing chapter.

(9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.

(10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

➔Section 74. KRS 214.625 is amended to read as follows:

(1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.

(2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious

1 disease if a doctor or advanced practice registered nurse orders the test for
2 diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this
3 section, the results of a test or procedure to determine human immunodeficiency
4 virus infection, antibodies to human immunodeficiency virus, or infection with any
5 probable causative agent of acquired immunodeficiency syndrome performed under
6 the authorization of a general consent form shall be used only for diagnostic or
7 other purposes directly related to medical treatment.

8 (3) In any emergency situation where informed consent of the patient cannot reasonably
9 be obtained before providing health-care services, there is no requirement that a
10 health-care provider obtain a previous informed consent.

11 (4) The physician or advanced practice registered nurse who orders the test pursuant
12 to subsections (1) and (2) of this section, or the attending physician, shall be
13 responsible for informing the patient of the results of the test if the test results are
14 positive for human immunodeficiency virus infection. If the tests are positive, the
15 physician or advanced practice registered nurse shall also be responsible for either:

16 (a) Providing information and counseling to the patient concerning his infection
17 or diagnosis and the known medical implications of such status or condition;
18 or

19 (b) Referring the patient to another appropriate professional or health-care facility
20 for the information and counseling.

21 (5) (a) No person in this state shall perform a test designed to identify the human
22 immunodeficiency virus, or its antigen or antibody, without first obtaining the
23 informed consent of the person upon whom the test is being performed, except
24 as specified in subsections (2) and (3) of this section.

25 (b) No test result shall be determined as positive, and no positive test result shall
26 be revealed to any person, without corroborating or confirmatory tests being
27 conducted.

(c) No person who has obtained or has knowledge of a test result pursuant to this section shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative;
2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
6. A health facility or health-care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to July 13, 1990, for the purpose of artificial insemination;
7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
9. A parent, foster parent, or legal guardian of a minor; a crime victim; or a

1 person specified in KRS 438.250;

2 10. A person allowed access by a court order which is issued in compliance
3 with the following provisions:

4 a. No court of this state shall issue an order to permit access to a test
5 for human immunodeficiency virus performed in a medical or
6 public health setting to any person not authorized by this section or
7 by KRS 214.420. A court may order an individual to be tested for
8 human immunodeficiency virus only if the person seeking the test
9 results has demonstrated a compelling need for the test results
10 which cannot be accommodated by other means. In assessing
11 compelling need, the court shall weigh the need for testing and
12 disclosure against the privacy interest of the test subject and the
13 public interest which may be disserved by disclosure which deters
14 blood, organ, and semen donation and future human
15 immunodeficiency virus-related testing or which may lead to
16 discrimination. This paragraph shall not apply to blood bank donor
17 records;

18 b. Pleadings pertaining to disclosure of test results shall substitute a
19 pseudonym for the true name of the subject of the test. The
20 disclosure to the parties of the subject's true name shall be
21 communicated confidentially, in documents not filed with the
22 court;

23 c. Before granting any order, the court shall provide the individual
24 whose test result is in question with notice and a reasonable
25 opportunity to participate in the proceedings if he is not already a
26 party;

27 d. Court proceedings as to disclosure of test results shall be

1 conducted in camera, unless the subject of the test agrees to a
 2 hearing in open court or unless the court determines that a public
 3 hearing is necessary to the public interest and the proper
 4 administration of justice; and

- 5 e. Upon the issuance of an order to disclose test results, the court
 6 shall impose appropriate safeguards against unauthorized
 7 disclosure, which shall specify the persons who may have access to
 8 the information, the purposes for which the information shall be
 9 used, and appropriate prohibitions on future disclosure.

10 No person to whom the results of a test have been disclosed shall disclose the
 11 test results to another person except as authorized by this subsection. When
 12 disclosure is made pursuant to this subsection, it shall be accompanied by a
 13 statement in writing which includes the following or substantially similar
 14 language: "This information has been disclosed to you from records whose
 15 confidentiality is protected by state law. State law prohibits you from making
 16 any further disclosure of such information without the specific written consent
 17 of the person to whom such information pertains, or as otherwise permitted by
 18 state law. A general authorization for the release of medical or other
 19 information is NOT sufficient for this purpose." An oral disclosure shall be
 20 accompanied by oral notice and followed by a written notice within ten (10)
 21 days.

- 22 (6) (a) The Cabinet for Health and Family Services shall establish a network of
 23 voluntary human immunodeficiency virus testing programs in every county in
 24 the state. These programs shall be conducted in each public health department
 25 established under the provisions of KRS Chapter 211. Additional programs
 26 may be contracted to other private providers to the extent that finances permit
 27 and local circumstances dictate.

- 1 (b) Each public health department shall have the ability to provide counseling and
2 testing for the human immunodeficiency virus to each patient who receives
3 services and shall offer the testing on a voluntary basis to each patient who
4 requests the test.
- 5 (c) Each public health department shall provide a program of counseling and
6 testing for human immunodeficiency virus infection, on an anonymous or
7 confidential basis, dependent on the patient's desire. If the testing is performed
8 on an anonymous basis, only the statistical information relating to a positive
9 test for human immunodeficiency virus infection shall be reported to the
10 cabinet. If the testing is performed on a confidential basis, the name and other
11 information specified in KRS 214.645 shall be reported to the cabinet. The
12 cabinet shall continue to provide for anonymous testing and counseling.
- 13 (d) The result of a serologic test conducted under the auspices of the cabinet shall
14 not be used to determine if a person may be insured for disability, health, or
15 life insurance or to screen or determine suitability for, or to discharge a person
16 from, employment. Any person who violates the provisions of this subsection
17 shall be guilty of a Class A misdemeanor.
- 18 (7) No public health department and no other person in this state shall conduct or hold
19 themselves out to the public as conducting a testing program for acquired
20 immunodeficiency syndrome, acquired immunodeficiency syndrome related
21 complex, or human immunodeficiency virus status without first registering with the
22 cabinet, complying with all other applicable provisions of state law, and meeting the
23 following requirements:
- 24 (a) The program shall be directed by a person who has completed an educational
25 course approved by the cabinet in the counseling of persons with acquired
26 immunodeficiency syndrome, acquired immunodeficiency syndrome related
27 complex, or human immunodeficiency virus infection;

- 1 (b) The program shall have all medical care supervised by a physician licensed
2 under the provisions of KRS Chapter 311;
- 3 (c) The program shall have all laboratory procedures performed in a laboratory
4 licensed under the provisions of KRS Chapter 333;
- 5 (d) Informed consent shall be required prior to testing. Informed consent shall be
6 preceded by an explanation of the test, including its purpose, potential uses,
7 and limitations and the meaning of its results;
- 8 (e) The program, unless it is a blood donor center, shall provide pretest
9 counseling on the meaning of a test for human immunodeficiency virus,
10 including medical indications for the test; the possibility of false positive or
11 false negative results; the potential need for confirmatory testing; the potential
12 social, medical, and economic consequences of a positive test result; and the
13 need to eliminate high-risk behavior;
- 14 (f) The program shall provide supplemental corroborative testing on all positive
15 test results before the results of any positive test is provided to the patient;
- 16 (g) The program shall provide post-test counseling, in person, on the meaning of
17 the test results; the possible need for additional testing; the social, medical,
18 and economic consequences of a positive test result; and the need to eliminate
19 behavior which might spread the disease to others;
- 20 (h) Each person providing post-test counseling to a patient with a positive test
21 result shall receive specialized training, to be specified by regulation of the
22 cabinet, about the special needs of persons with positive results, including
23 recognition of possible suicidal behavior, and shall refer the patient for further
24 health and social services as appropriate;
- 25 (i) When services are provided for a charge during pretest counseling, testing,
26 supplemental testing, and post-test counseling, the program shall provide a
27 complete list of all charges to the patient and the cabinet; and

1 (j) Nothing in this subsection shall be construed to require a facility licensed
 2 under KRS Chapter 333 or a person licensed under the provisions of KRS
 3 Chapters 311, 312, or 313 to register with the cabinet if he or she does not
 4 advertise or hold himself or herself out to the public as conducting testing
 5 programs for human immunodeficiency virus infection or specializing in such
 6 testing.

7 (8) Any violation of this section by a licensed health-care provider shall be a ground for
 8 disciplinary action contained in the professional's respective licensing chapter.

9 (9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013,
 10 insurers and others participating in activities related to the insurance application and
 11 underwriting process shall be exempt from this section.

12 (10) The cabinet shall develop program standards consistent with the provisions of this
 13 section for counseling and testing persons for the human immunodeficiency virus.

14 ➔Section 75. KRS 214.645 is amended to read as follows:

15 (1) The Cabinet for Health and Family Services shall establish a system for reporting,
 16 by the use of the person's name, of all persons who test positive for the human
 17 immunodeficiency virus (HIV) infection. The reporting shall include the data
 18 including, but not limited to, CD4 count and viral load, and other information that
 19 are necessary to comply with the confidentiality and reporting requirements of the
 20 most recent edition of the Centers for Disease Control and Prevention's (CDC)
 21 Guidelines for National Human Immunodeficiency Virus Case Surveillance. As
 22 recommended by the CDC, anonymous testing shall remain as an alternative. If less
 23 restrictive data identifying requirements are identified by the CDC, the cabinet shall
 24 evaluate the new requirements for implementation.

25 (2) The reporting system established under subsection (1) of this section shall:

26 (a) Use the same confidential name-based approach for HIV surveillance that is
 27 used for AIDS surveillance by the cabinet;

- 1 (b) Attempt to identify all modes of HIV transmission, unusual clinical or
- 2 virologic manifestations, and other cases of public health importance;
- 3 (c) Require collection of the names and data from all private and public sources
- 4 of HIV-related testing and care services; and
- 5 (d) Use reporting methods that match the CDC's standards for completeness,
- 6 timeliness, and accuracy, and follow up, as necessary, with the health care
- 7 provider making the report to verify completeness, timeliness, and accuracy.
- 8 (3) Authorized surveillance staff designated by the cabinet shall:
 - 9 (a) Match the information from the reporting system to other public health
 - 10 databases, wherever possible, to limit duplication and to better quantify the
 - 11 extent of HIV infection in the Commonwealth;
 - 12 (b) Conduct a biennial assessment of the HIV and AIDS reporting systems, insure
 - 13 that the assessment is available for review by the public and any state or
 - 14 federal agency, and forward a copy of the assessment to the Legislative
 - 15 Research Commission and the Interim Joint Committee on Health and
 - 16 Welfare;
 - 17 (c) Document the security policies and procedures and insure their availability for
 - 18 review by the public or any state or federal agency;
 - 19 (d) Minimize storage and retention of unnecessary paper or electronic reports and
 - 20 insure that related policies are consistent with CDC technical guidelines;
 - 21 (e) Assure that electronic transfer of data is protected by encryption during
 - 22 transfer;
 - 23 (f) Provide that records be stored in a physically secluded area and protected by
 - 24 coded passwords and computer encryption;
 - 25 (g) Restrict access to data a minimum number of authorized surveillance staff
 - 26 who are designated by a responsible authorizing official, who have been
 - 27 trained in confidentiality procedures, and who are aware of penalties for

- 1 unauthorized disclosure of surveillance information;
- 2 (h) Require that any other public health program that receives data has
- 3 appropriate security and confidentiality protections and penalties;
- 4 (i) Restrict use of data, from which identifying information has been removed, to
- 5 cabinet-approved research, and require all persons with this use to sign
- 6 confidentiality statements;
- 7 (j) Prohibit release of any names or any other identifying information that may
- 8 have been received in a report to any person or organization, whether public or
- 9 private, except in compliance with federal law or consultations with other
- 10 state surveillance programs and reporting sources. Under no circumstances
- 11 shall a name or any identifying information be reported to the CDC; and
- 12 (k) Immediately investigate any report of breach of reporting, surveillance, or
- 13 confidentiality policy, report the breach to the CDC, develop
- 14 recommendations for improvements in security measure, and take appropriate
- 15 disciplinary action for any documented breach.
- 16 (4) The cabinet shall require any physician, advanced practice registered nurse, or
- 17 medical laboratory that receives a report of a positive test for the human
- 18 immunodeficiency virus to report that information by reference to the name in
- 19 accordance with the procedure for establishing name reporting required by the
- 20 cabinet in an administrative regulation.

21 ➔Section 76. KRS 216.935 is amended to read as follows:

22 As used in KRS 216.935 to 216.939, unless the context requires otherwise:

- 23 (1) "Home health aide" means an individual who is hired to perform home health aide
- 24 services.
- 25 (2) "Home health agency" means a public agency or private organization, or a
- 26 subdivision of such an agency or organization which is licensed as a home health
- 27 agency by the Kentucky Health Facilities and Health Services Certificate of Need

1 and Licensure Board and is certified to participate as a home health agency under
 2 Title XVIII of the Social Security Act.

3 (3) "Home health aide services" means those services provided by a home health aide
 4 and supervised by a registered nurse which are directed towards the personal care of
 5 the patient. Such services shall include, but not be limited to, the following:

- 6 (a) Helping the patient with bath and care of mouth, skin, and hair;
- 7 (b) Helping the patient to the bathroom or in using a bedpan;
- 8 (c) Helping the patient in and out of bed and assisting with ambulation;
- 9 (d) Helping the patient with prescribed exercises which the patient and home
 10 health aide have been taught by appropriate professional personnel;
- 11 (e) Assisting with medication ordinarily self-administered that has been
 12 specifically ordered by a physician or advanced practice registered nurse;
- 13 (f) Performing incidental household services as are essential to the patient's
 14 health care at home, if these services would have been performed if the patient
 15 was in a hospital or skilled nursing facility; and
- 16 (g) Reporting changes in the patient's condition or family situation to the
 17 professional nurse supervisor.

18 (4) "Nurse aide" means an individual, including a nursing student, medication aide, and
 19 a person employed through a nursing pool, who provides nursing or nursing related
 20 services to a resident in a nursing facility or home health agency, excluding:

- 21 (a) An individual who is a licensed health professional;
- 22 (b) A volunteer who provides the nursing or nursing-related services without
 23 monetary compensation; and
- 24 (c) A person who is hired by the resident or family to sit with the resident and
 25 who does not perform nursing or nursing-related services.

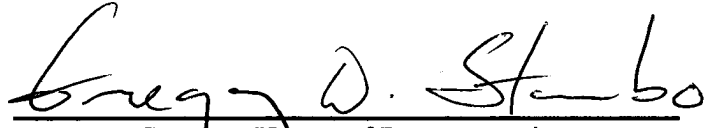
26 ➔Section 77. The following KRS sections are repealed:

27 313.140 Unprofessional conduct.

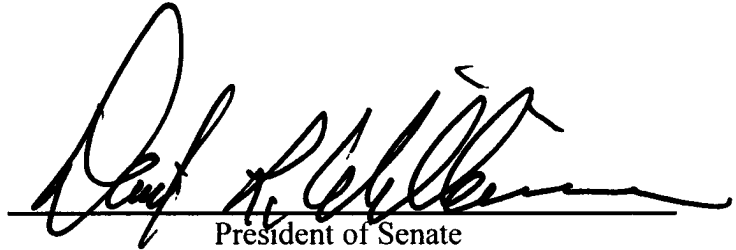
- 1 313.150 Proceedings to reprimand, place on probation, revoke, suspend, refuse to renew,
2 or refuse to issue license -- Administrative hearing -- Appeal.
- 3 313.170 Record of revocation or suspension.
- 4 313.190 Practice prohibited when license suspended or revoked.
- 5 313.195 Emergency order for immediate temporary suspension of license -- Appeal to
6 board -- Hearing -- Appeal of final order.
- 7 313.197 Contracts to continue the operations of a deceased or incapacitated dentist's
8 practice.
- 9 313.200 Board of Dentistry -- Members -- Qualifications -- Terms -- Vacancies --
10 Compensation.
- 11 313.210 Officers of board -- Meetings -- Quorum -- Record books.
- 12 313.220 Powers and duties of board -- Annual report.
- 13 313.225 Investigators, appointment.
- 14 313.230 Dentist to display license and certificate.
- 15 313.240 Professional service corporations, professional limited liability companies, and
16 partnerships -- Use of names -- Places of practice -- Limitation on number of
17 practices per person.
- 18 313.243 Duties to report names and capacity of assistants on demand.
- 19 313.247 Laboratory procedure work order required for dental laboratory work,
20 exception.
- 21 313.250 Dentists' prescriptions to be filled -- Death certificates, signing -- Persons
22 exempt from law.
- 23 313.255 Duty of treating dentist utilizing telehealth to ensure patient's informed consent
24 and maintain confidentiality -- Board to promulgate administrative regulations --
25 Definition of "telehealth".
- 26 313.257 Nonliability of licensees for emergency care.
- 27 313.258 Dentist serving as member of medical review board -- Nonliability.

- 1 313.259 Injunctive relief against unauthorized practice.
- 2 313.260 Board to administer dental hygiene law.
- 3 313.270 Powers and duties of board as to dental hygiene law.
- 4 313.280 Compensation of board members.
- 5 313.290 Eligibility for examination for license to practice dental hygiene.
- 6 313.300 Application for examination -- Fee -- Issuance of license -- Annual fee.
- 7 313.303 Reciprocal licensing of dental hygienists -- Fee.
- 8 313.305 Biennial renewal of license -- Completion of continuing education courses a
- 9 prerequisite to license renewal -- Notification of change of address.
- 10 313.310 License required -- Practice regulated -- Practice when supervising dentist not
- 11 present -- Display of license -- Duties of supervising dentist -- Employment --
- 12 Permitted screening services.
- 13 313.320 Form of licenses.
- 14 313.330 Disciplinary actions against dental hygienists -- Private admonishment.
- 15 313.340 Appeal from order revoking, suspending or refusing to renew license.
- 16 313.343 Delegation of block and infiltration anesthesia and nitrous oxide analgesia to
- 17 dental hygienist -- Certificate of verification -- Fee -- Continuing education for
- 18 anesthesia certification.
- 19 313.345 Administrative regulations on practices that may be performed by dental
- 20 assistant -- Courses of study -- Supervision by dentist -- Certificate -- Dental
- 21 assistant services.
- 22 313.350 Revolving fund of board -- Petty cash fund.
- 23 313.400 Specialties listed.
- 24 313.410 License to practice as specialist required.
- 25 313.420 Licensure of practicing specialist -- Examinations -- Exemption from
- 26 examination requirement.
- 27 313.430 Qualifications for specialist's examination -- Fee -- Method of examination.

- 1 313.440 Fees for license certificates -- Contents of certificates.
- 2 313.445 Specialist's practice limited -- Authority of general practitioner -- Exception
- 3 from specialty license requirement for charitable health care provider.
- 4 313.460 Suspension or revocation of specialty licenses.
- 5 313.470 Disposition of fees.
- 6 313.510 Dental Laboratory Advisory Commission -- Membership -- Duties.
- 7 313.520 Annual registration of laboratories and technicians -- Fees -- Certificates of
- 8 authority.
- 9 313.530 Operation without registration prohibited.
- 10 313.540 Injunction.
- 11 313.600 Request to expunge minor violations from permanent record -- Administrative
- 12 regulations.
- 13 313.990 Penalties.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 